88-473

Supreme Court, U.S.
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NO.

in the

Supreme Court

of the

United States of America

October Term, 1988

CHRIS KARSTETER,

Petitioner,

vs.

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA THIRD DISTRICT, REVIEW DENIED BY THE SUPREME COURT OF FLORIDA

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QUESTION PRESENTED FOR REVIEW

Whether the District Court of Appeal of Florida, Third District, erred in determining that §83.60(2) *Florida Statutes* was not unconstitutional, as a denial of due process of law.

A. Did the challenged statute deny Petitioner, KARSTETER, the right of due process of law in an eviction proceeding, by requiring the trial court to strike his defenses and determine liability against him through the entry of a default, based solely upon his failure to deposit accrued rent into the court registry.

B. Did the challenged statute deny Petitioner, KARSTETER, the right of due process of law, by depriving him of the right to jury trial, when such right was guaranteed by the *Florida Constitution*, the laws of Florida and by Rules of Court that were established by the Supreme Court of Florida.

C. Was the doctrine of mootness inapplicable to the present proceeding, because the application of the challenged statute is "capable of repetition, yet evading review".

PARTIES TO THE PROCEEDING

The parties to this proceeding are the Petitioner: Chris Karsteter; and the Respondent: The Graham Companies f/k/a The Sengra Corporation, a Florida Corporation. Also having an interest in this proceeding are: Miami Lakes Inn, Athletic Club and Golf Resort, Inc., f/k/a Miami Lakes Inn and Country Club, a Florida corporation, which is a wholly owned subsidiary of The Graham Companies, and various officers and directors of both Respondent and its subsidiary corporation, including: William A. Graham, Robert L. Rawls, William E. Graham, Wallace L. Lewis, Carol Graham Willie, Edwin E. Feathers, C. David Younts, Sandra Graham Younts, Jerry Broz, and Beth Graham Martinez.

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REFERENCE TO OFFICIAL REPORTS

This Petition for Writ of Certiorari is directed to the following decision: *Karsteter v. The Graham Companies*, 521 So.2d 298 (Fla. 3d DCA 1988), *Petition for Review denied*, ____So.2d____ (Fla. 1988) (App. Q-1-2).

STATEMENT OF GROUNDS UPON WHICH THE JURISDICTION OF THE COURT IS INVOKED

This Petition seeks review of an opinion of the District Court of Appeal of Florida, which was entered on March 8, 1988. A timely Notice to Invoke Discretionary Jurisdiction was filed in the Supreme Court of Florida on March 28, 1988, which was followed by a Petition for Review of the District Court's Opinion. The Petition for Review was denied by the Supreme Court of Florida on June 22, 1988.

Jurisdiction is vested in the Supreme Court of the United States pursuant to Art. III, *U.S.Const.*, 28 *U.S.C.* §1254 and *Sup.Ct.R.* 17.1(b), (c).

STATUTE WHICH THE CASE INVOLVES

This Petition involves a constitutional challenge to §83.60(2) *Fla.Stat.*, as a denial of due process of law. As applied to the present case, §83.60(2) *Fla.Stat.* provided that:

> In an action by the landlord for possession of a dwelling unit based upon non-payment of rent, if a tenant interposes any defense other than payment, the defendant shall pay into the Registry of the Court the accrued rent as alleged in the complaint or as determined by the court and the rent which accrues during the pendency of the proceeding, when due. Failure of the tenant to pay rent into the Registry of the Court as provided herein constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default.

The eviction proceeding from which the present Petition derives was commenced on June 6, 1986. Effective October 1, 1987, the State of Florida tightened the stranglehold that landlords have on tenants in eviction proceedings by amending §83.60(2) *Fla.Stat.*, so that at present, the law in Florida is that:

> In any action by the landlord for possession of a dwelling unit based upon non-payment of rent, if a tenant interposes any defense other than payment, the defendant shall pay into the Registry of the Court the accrued rent as alleged in the complaint or as determined by the court and the rent which accrues during the pendency of the proceeding, when due. Failure of the tenant to pay rent into the Registry of the Court as provided herein constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default *without further notice or hearing thereon.*

STATEMENT OF THE CASE

A. Factual background of the Case.

This was an eviction proceeding filed in the County Court in and for Dade County Florida. Petitioner, CHRIS KARSTETER [hereinafter "KARSTETER"], was a defendant. Respondent, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation [hereinafter "GRAHAM"], was the plaintiff. A second defendant was MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation [hereinafter "MIAMI LAKES INN"] (App. A-1-9), which was a wholly owned subsidiary of GRAHAM (App. O-5). Throughout this Petition, references to the Appendix will refer to "App." with appropriate pagination.

The facts of the case, which were determined through discovery, established that in August, 1984, KARSTETER,

a resident of Seattle, Washington, was hired by MIAMI LAKES INN, pursuant to a letter agreement dated August 20, 1984, which was signed by C. David Younts, President of MIAMI LAKES INN (App. B-16-17). The employment was to extend "year-to-year on a per annum basis" (App. N-9). The agreement listed various "terms of employment", including, *inter alia*, the following:

> 3. Housing—Miami Lakes Inn & Country Club will provide. Gas, electric, water, and telephone are not included (App. B-16).

In accordance with this provision, a rent free condominium apartment was provided to KARSTETER from the date he was hired. The particular apartment which was owned by GRAHAM (App. O-5), was described as:

> Miami Lakes Eagle Nest Duplexes
> 15461 Durnford Drive
> Miami Lakes, Florida 33014 (App. B-18).

MIAMI LAKES INN was a wholly owned subsidiary of GRAHAM (App. O-5). The respective officers and directors of the two companies are (App. O-9-11):

	GRAHAM	MIAMI LAKES INN
Board Chairman	William A. Graham	William A. Graham
President	Robert L. Rawls	C. David Younts
Executive V.P.	William E. Graham	Sandra Graham Younts
Senior V.P.	Wallace L. Lewis	Robert L. Rawls
Vice President	Carol Graham Willie	Jerry Broz
Sec.-Treas.	Edwin E. Feathers	Edwin E. Feathers

KARSTETER's salary was paid by GRAHAM. KARSTETER was also issued various credit cards including an American Express credit card on behalf of GRAHAM; an Av-Med health card on behalf of GRAHAM's predecessor, SENGRA; and an AT&T card on behalf of MIAMI LAKES INN (App. O-7). Based upon the presence of the same individuals as officers and directors of both corporations,

GRAHAM's issuance of credit cards to KARSTETER, and the fact that KARSTETER was paid his salary by GRAHAM rather than by MIAMI LAKES INN, KARSTETER sought to pierce the corporate veil existing between GRAHAM and MIAMI LAKES INN (App. B-2-3, 6, 10-11).

Without KARSTETER's knowledge, GRAHAM and MIAMI LAKES INN entered into a lease agreement for KARSTETER's apartment, on which the lessee was listed as "MIAMI LAKES INN & COUNTRY CLUB–KARSTETER". Two different copies of the lease existed and each was signed in a different manner. The lease which was attached as an exhibit to GRAHAM's Complaint had a term extending from October 1, 1985 to September 30, 1986, was dated December 26, 1985, had the number "901" penciled in next to the property description, and had the signature of Beth G[raham] Martinez, as well as C. David Younts' initials at the bottom (App. B-22-26). A second copy of the lease agreement also existed, however, which listed the same term from October 1, 1985 to September 30, 1986, but was dated December 26, 1986. This latter lease agreement had neither the "901" penciled in, nor the signature of Beth G. Martinez at the bottom (App. B-18-21). Neither lease was signed by KARSTETER (App. B-18-26), nor was he ever shown a copy of either lease by his employer, although his name is listed on both (App. N-7).

Since occupying the demised premises, in 1984, KARSTETER never paid any rent (App. N-7). On April 21, 1986, KARSTETER was orally notified by C. David Younts that he was being discharged (App. N-7-8). An eviction proceeding was subsequently filed in the Dade County Court on June 6, 1986 (App. A-1-9).

B. Procedural background of the case.

The issues presented herein derive from an eviction proceeding filed by GRAHAM against KARSTETER and MIAMI LAKES INN, in the Dade County Court (App. A-1-9).

In response to GRAHAM's Complaint for Removal of Tenant, MIAMI LAKES INN answered, admitting all of the allegations of the complaint (App. A-10-11), and stipulated to the entry of final judgment (App. A-12-13). KARSTETER filed an answer with affirmative defenses, a counterclaim, a crossclaim against MIAMI LAKES INN, and demanded a trial by jury (App. B-1-27).

During the course of the proceedings—on GRAHAM's Motion (App. C-1-3), and KARSTETER's Response (App. C-4-6)—KARSTETER's Counterclaim and Crossclaim were severed and transferred to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, General Jurisdiction Division (App. L-1-2), where they still remain pending as Case No. 86-35715 (CA 03). The reason for the severance and transfer was that the counterclaim and crossclaim both exceeded the jurisdiction of the Dade County Court, but the eviction proceeding was within the exclusive jurisdiction of such County Court.

The affirmative defenses raised by KARSTETER with regard to the eviction proceeding included the following:

AFFIRMATIVE DEFENSES

As and for Affirmative Defenses the Defendants, CHRIS KARSTETER AND ALL OTHERS IN POSSESSION, would state the following:

> 7. At all times material hereto the MIAMI LAKES INN ATHLETIC CLUB AND GOLF RESORT, INC. f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation [hereinafter "MIAMI LAKES INN"] was and is a wholly owned subsidiary of Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, [hereinafter "THE GRAHAM COMPANIES"], and the intermingling of officers, directors, managing agents and operations of the said Defendant, MIAMI LAKES INN and the said Plaintiff, THE GRAHAM

COMPANIES is such that the corporate veil which exists between same should be pierced for reason that they have operated in all respects as one and the same entity. As a consequence, the Complaint fails to state a cause of action against itself for removal of tenant.

8. At all times material hereto the Defendant, CHRIS KARSTETER [hereinafter "KARSTETER"] had in full force and effect a contract of employment with the Co-Defendant, MIAMI LAKES INN, which provided for employment on an annual basis, and which contract included the provision of rent free housing. As a consequence, there is no rent due from KARSTETER to either the Co-Defendant, MIAMI LAKES INN, or the Plaintiff, THE GRAHAM COMPANIES. The conditions of such contract for employment are set forth in an August 20, 1984 letter from C. David Younts to KARSTETER, a copy of which is attached hereto as Exhibit "1", and the period of employment is further set forth in the lease agreement of which there are two copies, which are attached hereto as Exhibits "2" and "3" respectively. It would further be shown that Exhibit "3" hereto is the same lease agreement which is attached as Exhibit "B" to the Plaintiff's Complaint.

9. At all times material hereto, Plaintiff, THE GRAHAM COMPANIES, ratified, accepted, approved, agreed to abide by, assumed, and/or accepted the assignment of the contract for employment of the Defendant, KARSTETER, as set forth in the August 20, 1984 letter, a copy of which is attached hereto as Exhibit "1" and the lease agreements, copies of which are attached hereto as Exhibits "2" and "3". As a consequence, Plaintiff, THE GRAHAM COMPANIES, has waived any and all rights to receipt of rental payments for reason that the Defendant, KARSTETER, is entitled, pursuant

to such contract of employment, to the provision of rent free housing by MIAMI LAKES INN, and by THE GRAHAM COMPANIES, jointly and severally.

10. Plaintiff, THE GRAHAM COMPANIES, failed to comply with the provisions of §83.57 *Fla.Stat.* which provides for the termination of tenancies [App. R-1-2]. To this extent it would be shown that the term of the tenancy on the property in question was established by the lease agreement as being one year extending from October 1, 1985 through September 30, 1986, and pursuant to the provisions of §83.57 *Fla.Stat.*, written notice of the termination of such lease was required to be provided to the Defendant, KARSTETER, not less than 60 days prior to the end of the term of his occupancy. Plaintiff, THE GRAHAM COMPANIES, has totally failed to comply with this requirement for reason that the only notice provided to the Defendant, KARSTETER, is a "Speed Letter" from John Halley dated May 7, 1986, which "Speed Letter" has indicated a termination of the lease agreement, together with an increase in the amount of rent from $730.00 a month as indicated in the lease agreements attached hereto as Exhibits "2" and "3", to $740.00 a month, as indicated in the "Speed Letter"; and an additional provision requiring a security of $1,100.00, which under the lease agreements attached hereto as Exhibits "2" and "3" is indicated as "NONE". A true copy of the "Speed Letter" dated 5/7/86 is attached hereto as Exhibit "4".

11. Plaintiff, THE GRAHAM COMPANIES, has brought the within cause of action as a "retaliatory measure" in violation of §83.64 *Fla.Stat.* [App. R-2], in that it has discriminated against the Defendant, KARSTETER, by treating the said Defendant differently as to the rent charged for the housing than is required under the letter agreement attached hereto

as Exhibit "1" and the lease agreements attached hereto as Exhibits "2" and "3".

12. Plaintiff, THE GRAHAM COMPANIES, has acted in "bad faith" in the filing of the within Complaint for Removal of Tenant for Non-Payment of Rent in direct violation of §83.44 *Fla.Stat.* [App. R-1], and in further violation of §83.64 *Fla.Stat.* [App. R-2].

13. The provisions of §83.60(2) *Fla.Stat.* are inapplicable to the within cause of action for reason that the agreement for the employment of the Defendant, KARSTETER, by the Co-Defendant, MIAMI LAKES INN, specifically provides that housing is without charge, and the period of such employment is specified by the lease agreements, copies of which are attached hereto as Exhibit "2" and "3".

14. The provisions of §83.60(2) Fla.Stat. cannot be imposed upon the Defendant, KARSTETER, for reason that it is unconstitutional as a denial of free access to the courts.

15. At all times material hereto the Co-Defendant, MIAMI LAKES INN, had in full force and effect an Employee Handbook that set forth Special Regulations which could result in termination of employment. The Co-Defendant, MIAMI LAKES INN, and the Plaintiff, THE GRAHAM COMPANIES, jointly and severally, and collusively, have sought to terminate the employment of the Defendant, KARSTETER, for reasons not included within the special regulations set forth in the Employee Handbook, a true copy of which is attached hereto as Exhibit "5".

16. Defendant, KARSTETER, has been forced to retain the Law Offices of Ress, Gomez, Rosenberg,

Howland & Mintz, P.A. to defend him in the wrongful eviction action which has been instituted by Plaintiff, THE GRAHAM COMPANIES, and has obligated himself to pay attorneys' fees with respect to same. As a consequence, Defendant, KARSTETER, is entitled to an award of attorneys' fees in accordance with the provisions of §83.48 *Fla.Stat.* (App. B-2-5; R-1).

Following the receipt of KARSTETER's pleadings, GRAHAM filed a Reply to Affirmative Defenses (App. D-1-4), a Reply to Counterclaim, Affirmative Defenses to Counterclaim, and Motion to Dismiss Counterclaim (App. E-1-6), a Notice of Demand of Payment of Rent Pendente Lite into Registry of Court (App. F-1-2), a Motion to Strike Answer of Affirmative Defenses of Defendant, Chris Karsteter, and for Entry of Default Pursuant to Florida Statutes §83.60(2) (App. G-1-3), and a Notice of Trial (App. G-4-5).

As a consequence of the demand for payment of Rent into the Court Registry, and the Motion to Strike and for Entry of Default, KARSTETER filed a Response, specifically attacking the constitutionality of §83.60(2) *Fla.Stat.*—which issue had already been raised as Affirmative Defense No. 14—as violative of rights guaranteed by Art. I, §§9 and 21, *Fla.Const.* and of rights guaranteed under the Due Process and Equal Protection Clauses, *U.S.Const.* (App. H-1-2). A Memorandum of Law was filed by KARSTETER in support of his constitutional attack on §83.60(2) *Fla.Stat.* (App. I-1-12), and GRAHAM filed a Reply Memorandum (App. J-1-4).

The constitutional issue was initially argued below on July 22, 1986 (App. K-1-41), at which time the court required that rental monies be deposited into the registry of the court. When advised that both KARSTETER and his wife were out of work, having been terminated by GRAHAM and MIAMI LAKES INN, and could not make such payments, the court applied the provisions of §83.60(2) *Fla.Stat.* to strike KARSTETER's pleadings to enter a default (App. K-11-12),

and an Order confirming such default was accordingly entered (App. L-1-2).

While the county court was considering the entry of a default, KARSTETER pointed out that there was also a demand for jury trial, which required a jury determination of the amount of rent that was allegedly owed by KARSTETER to GRAHAM. The court was advised that it was circumventing and depriving KARSTETER of such right to jury trial by making its own determination of the amount of rent that was required to be deposited into the court registry (App. K-22-23).

Subsequently at a hearing on August 4, 1986 (App. L-3-55), a Final Judgment was entered for possession of the demised premises (App. M-3-4). Thereafter, in compliance with such Final Judgment, KARSTETER vacated the premises (App. L-52).

An appeal of the Final Judgment was filed with the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, Appellate Division. In his Brief, KARSTETER argued that §83.60(2) *Fla.Stat.* was unconstitutional in that it violated the Due Process and Equal Protection Clauses of the *U.S.Const.*, various provisions of the *Fla.Const.*, and deprived KARSTETER of his right to trial by jury. The Appellate Court, however, affirmed the Final Judgment "Per Curiam", by decision rendered July 21, 1987 (App. P-1).

Following the conclusion of the initial appeal proceeding, KARSTETER filed a Petition for Writ of Certiorari with the District Court of Appeal of Florida, Third District, wherein he again argued that §83.60(2) *Fla.Stat.* was unconstitutional in violation of the Due Process and Equal Protection Clauses of the *U.S.Const.* and that it deprived him of trial by jury. Following oral argument, in an opinion entered March 8, 1988, the court held as follows:

PER CURIAM.

Section 83.60(2), Florida Statutes (1985), which requires a tenant asserting a right to possession to deposit rent into the court registry pending resolution of the litigation, is not, unconstitutional. *See, Lindsey v. Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972); *K.D. Lewis Enters. Corp. v. Smith*, 445 So.2d 1032 (Fla. 5th DCA 1984). *See* §718.401(4), *Fla.Stat.* (1985); *Farrell v. Drew*, 19 N.Y.2d 486, 281 N.Y.S.2d 1, 227 N.E.2d 824 (1967).

Certiorari denied. *Karsteter v. The Graham Companies*, 521 So.2d 298 (Fla. 3d DCA 1988) (App. Q-1-2).

A timely petition for review of this opinion was filed with the Florida Supreme Court, which declined to accept jurisdiction by order entered June 22, 1988 (App. P-8-9).

Pursuant to §§83.48 and 59.46 *Fla.Stat.*, the prevailing party in an action to enforce the provisions of a rental agreement may recover attorneys fees at both the trial and appellate levels [App. R-1]. In the within proceeding, GRAHAM has been awarded the following: attorneys' fees of $2,500.00 and costs of $155.50 at the trial level (App. M-3-4); attorneys' fees of $4,250.00 on appeal to the Circuit Court, Appellate Division (App. P-2-4); attorneys fees of $3,875.00 on Petition for Certiorari by the Third District Court of Appeal (App. P-5-7); and $500.00 on Petition for Review by the Supreme Court of Florida (App. P-8-9). All in all, GRAHAM has received awards totalling $11,125.00 attorneys' fees and $155.50 costs, to which legal interest at a rate of 12% per annum will be applied.

This present Petition for Writ of Certiorari has been filed, seeking a determination that the District Court of Appeal of Florida, Third District erred in deciding that §83.60(2) *Fla.Stat.* is not unconstitutional. It also seeks a reversal of the various awards of attorneys' fees that have been entered

in favor of GRAHAM, and a determination that if fees were to be awarded, they should have been awarded in favor of KARSTETER and against GRAHAM.

ARGUMENT

The issue presented by this Petition involves a constitutional challenge to §83.60 *Fla.Stat.*, which issue was raised in the trial court and at each appellate level in the Florida Court System. When originally presented in the eviction proceeding, the challenge was disregarded by the Dade County Court, and the provisions of §83.60(2) *Fla.Stat.* were applied to strike KARSTETER's pleadings and to enter a default against him.

A. Due Process of Law.

Throughout this proceeding, KARSTETER has claimed that the application of §83.60(2) *Fla.Stat.* deprived him of the fundamental right of due process of law. Section 83.60(2) *Fla.Stat.* provides that if accrued rent is not deposited into the court registry, the tenant's defenses are stricken and a default is entered against him. Such action constitutes a complete and final determination of liability on the merits in favor of the landlord, and against the tenant. In effect the landlord automatically wins the eviction proceeding, without a trial and without having to prove any of his allegations, while the tenant automatically loses without ever being given any opportunity to defend or be heard.

Section 83.60(2) *Fla.Stat.* was applied in just such a fashion against KARSTETER, so that liability was determined against him and in favor of GRAHAM, without a trial and without an opportunity to be heard. This result was totally contrary to the decisions of this Court which have clearly held that due process under the *United States Constitution* requires that there be an opportunity for a party to present every available defense to litigation. *American Surety Co. v. Baldwin*, 287 U.S. 156, 168, 53 S.Ct. 98, 77 L.Ed. 731 (1932); *Lindsey v. Normet*, 405 U.S. 56, 92 S.Ct. 862, 31

L.Ed.2d 36 (1972). "A fundamental requirement of due process is 'the opportunity to be heard.' " *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62, 66 (1965). As stated by Justice Oliver Wendell Holmes, under different circumstances, but equally applicable here:

> Whatever disagreement there may be as to the scope of the phrase "due process of law," there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard. *Frank v. Mangum*, 237 U.S. 309, 347, 35 S.Ct. 582, 595, 59 L.Ed. 969, 988 (1915).

Similarly, in *Railroad Comm. v. Pacific Gas Co.*, 302 U.S. 388, 393, 58 S.Ct. 334, 338, 82 L.Ed. 319, 322, (1938), it was held that:

> The right to a fair and open hearing is one of the rudiments of fair play assured to every litigant by the Federal Constitution as a minimal requirement.

In his arguments to the Florida courts, KARSTETER persistently pointed to this Court's decision in *Lindsey v. Normet, supra*, which involved a review of Oregon's eviction statute. The Oregon statute provided for an expedited trial date in eviction proceedings, unless a tenant obtains a continuance of such expedited trial date, which is conditioned on the "tenant's posting security for the payment of any rent that may accrue, if the plaintiff ultimately prevails, during the period of the continuance." 405 U.S. at 63, 92 S.Ct. at 869, 31 L.Ed.2d at 44. While the court upheld the majority of the challenged Oregon statute, it also specifically recognized that *"Due process requires that there be an opportunity to present every available defense"*, 405 U.S. at 66, 92 S.Ct. at 870, 31 L.Ed.2d at 46.

In response to the argument presented, GRAHAM attempted to show that the *Lindsey v. Normet* decision supported the actions of the Dade County Court in striking the affirmative defenses of KARSTETER, and entering a

default against him. GRAHAM argued that §83.60(2) *Fla.Stat.* was reasonable and justified in view of the nature of the Landlord-Tenant relationship, which was recognized in *Lindsey v. Normet.*

Such argument, however, totally overlooked the fact that in *Lindsey v. Normet*, the Court was reviewing an Oregon statute which provided for an expedited trial date, whereas in the present case, the challenged Florida statutory provision totally deprives the tenant of any trial whatsoever. By the mere failure to deposit accrued rent into the court registry, the tenant's defenses are stricken and liability is determined against him by the entry of a default.

The facts of the present case present as clear a picture of statutory inequity and unconstitutionality as may be imagined. GRAHAM brought an eviction proceeding against its wholly owned subsidiary, MIAMI LAKES INN, and KARSTETER based upon a lease agreement that it had privately entered into with MIAMI LAKES INN. Although his name appeared on the lease agreement, KARSTETER was never shown a copy of it, and never executed it. KARSTETER only knew that he had an employment contract with MIAMI LAKES INN, which provided that he would receive rent-free housing. Indeed, from the time that KARSTETER was employed by MIAMI LAKES INN in October 1984, until the eviction proceeding was filed in June 1986, he had been provided with rent-free housing, and had never paid any rent whatsoever. Further to this, the contract that KARSTETER had with MIAMI LAKES INN was ratified by GRAHAM which paid KARSTETER's salary and provided KARSTETER with credit cards and insurance coverage, as well as housing.

When KARSTETER attempted to raise these issues as affirmative defenses, however, and to question the very existence of the lease agreement, GRAHAM invoked the provisions of §83.60(2) *Fla.Stat.* to require KARSTETER to deposit rent into the court registry. When he failed to do so,

his defenses were striken and a default was entered against him. With regard to this, a portion of the argument presented by KARSTETER to the trial court is significant:

> THE COURT: The lease provides—
>
> MR. EDELSTEIN: The statute—
>
> THE COURT: —for the payment of the rent which is $730 a month.
>
> MR. EDELSTEIN: Between one of the Defendants and Miami Lakes Inn, which is a wholly-owned subsidiary, but Mr. Karsteter's agreement says that he doesn't pay anything. . . (App. K-19).
>
> * * *
>
> THE COURT: The statute does provide that if the money is not placed into the registry of the Court, then the Court may enter default, and thereupon proceed with the case for default judgment, final judgment of possession. (App. K-22).
>
> * * *
>
> MR. EDELSTEIN: Well, Judge, here again, part of our defenses raised which is that the amount involved that you are requiring to be deposited into the Court registry is an inaccurate amount; that the actual amount—and I think it requires a jury determination—is zero dollars, and now if the Court is going to apply the statute and strike that affirmative defense, then we are going to be precluded and deprived of an opportunity to be heard by the Court.
>
> THE COURT: That is what the statute provides.

MR. EDELSTEIN: I understand that, and that is why we are saying the statute is unconstitutional because it is going to take away our challenge even to the amount due, and if it turns out that if this matter was tried by a jury, and a jury came back and determined that the amount of monthly rent which we owed was zero, which is a genuine issue of material fact, then the statute is denying us access to the Courts and an opportunity to be heard.

THE COURT: $1,460 in the registry, in the court registry, and a jury trial will be granted (App. K-22-23).

The same issues were raised by KARSTETER at each level of the Florida appellate court system, and at each level such argument were disregarded. Indeed, when the argument was presented to Florida's Third District Court of Appeal, on Petition for Certiorari, the Court specifically held that §83.60(2) *Fla.Stat.* was constitutional; and the Supreme Court of Florida thereafter declined to review that determination. Nevertheless, the application of §83.60 *Fla.Stat.* in the present case clearly constituted an obvious deprivation of KARSTETER's fundamental right of due process of law. As a consequence, the within Petition for Writ of Certiorari has been filed to: (1) review the opinion of the Florida Third District Court of Appeal; (2) declare §83.60(2) *Fla.Stat.* unconstitutional as a denial of due process of law; and (3) reverse the decisions of the various Florida courts which were entered against KARSTETER.

B. Due Process protects the Right to Trial by Jury in Florida.

It should also be recognized that KARSTETER included a demand for jury trial as part of his Answer and Affirmative Defenses that were filed in the Dade County Court. His right to trial by jury, however, was denied when the trial court

struck his defenses and entered a default against him pursuant to §83.60(2) *Fla.Stat.*

It is recognized that the right to trial by jury in civil cases that was created by the seventh amendment to the U.S. Constitution, is not applicable to the states. *Woods v. Holy Hospital*, 591 F.2d 1164 (5th Cir. 1979): *Wartman v. Branch 7, Civil Division County Court, Milwaukee County, Wisconsin*, 510 F.2d 130 (7th Cir. 1975). Nevertheless, when the State of Florida established in its constitution, laws and court rules for the right of trial by jury in civil actions, any deprivation of such right would be a denial of due process under Amendment XIV to the *U.S. Constitution.*

Art. I, §9 and §22, *Fla.Const.*, provide as follows:

> SECTION 9. **Due process.**—No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself
>
> * * *
>
> SECTION 22. **Trial by Jury.**—The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

Section 69.071 *Fla.Stat.* specifies the number of jurors that are required in civil actions:

> **69.071 Number of jurors.**—In all civil actions when a jury is impaneled, a jury of six qualified jurors is sufficient.

The *Florida Rules of Civil Procedure*, as adopted by the Supreme Court of Florida, 187 So.2d 598, 624-625 (Fla. 1966), *Amended*, 265 So.2d 21, 40 (Fla. 1972), clearly sets forth the right to jury trial in civil actions:

RULE 1.430 DEMAND FOR JURY TRIAL; WAIVER

(a) Right Preserved. The right of trial by jury as declared by the Constitution or by statute shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other party a demand therefor in writing at any time after commencement of the action and not later than ten days after the service of the last pleading directed to such issue. The demand may be indorsed upon a pleading of the party.

(c) Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise, he is deemed to demand trial by jury for all issues so triable. If he has demanded trial by jury for only some of the issues, any other party may serve a demand for trial by jury of any other or all of the issues triable by jury ten days after service of the demand or such lesser time as the court may order.

(d) Waiver. A party who fails to serve a demand as required by this rule waives trial by jury. If waived, a jury trial may not be granted without the consent of parties but the court may allow an amendment in the proceedings to demand a trial by jury or order a trial by jury on its own motion. A demand for trial by jury may not be withdrawn without the consent of the parties.

Additionally, the *Florida Small Claims Rules*, as adopted by the Supreme Court of Florida, 270 So.2d 720, 734 (Fla. 1973), *Amended*, 366 So.2d 398, 399 (Fla. 1978), *Amended*, 461 So.2d 1344, 1347 (Fla. 1984), which apply to actions for eviction brought in the Florida County Courts, provides that:

7.150 JURY TRIALS

> Jury trials may be had upon written demand of the plaintiff at the time of the commencement of the suit, or by the defendant within five days after service of notice of suit or at pretrial conference, if any, or otherwise jury trial shall be deemed waived.

Florida law has long recognized that the fundamental right to trial by jury is inviolate. In *Miller v. Rolfe*, 97 So.2d 132 (Fla. 1st DCA 1957) it was stated that:

> Throughout the annals of our jurisprudence the right to trial by jury in actions cognizable at law, as guaranteed by the clear mandate of our Constitution, has remained sacred and inviolate, and although it may be waived by consent of the parties, it can neither be disregarded nor withheld by the court over the objection of a party vested with such right. On the issue of damages, appellants were entitled as of right to a jury trial in a court of law, and in the absence of a waiver thereof, they could not be deprived of that right. 97 So.2d at 135.

This statement has often been quoted and cited by Florida Appellate Courts. *See Hightower v. Bigoney*, 156 So.2d 506 (Fla. 1963); *City of Cocoa v. Sullivan Packing Co.*, 167 So.2d 750 (Fla. 2d DCA 1964); *Carter v. Suggs*, 190 So.2d 787 (Fla. 1st DCA 1966); *Boston Rug Galleries, Inc. v. William Iselin & Co., Inc.*, 212 So.2d 60 (Fla. 4th DCA 1968); *Molfetas v. State*, 323 So.2d 599 (Fla. 3d DCA 1975); *Hobbs v. Fla. First National Bank of Jacksonville*, 480 So.2d 153 (Fla. 1st DCA 1985).

A jury trial issue similar to KARSTETER's was addressed by the Court of Special Appeals of Maryland in *Lucky Ned Pepper's Ltd. v. Columbia Park and Recreation Assn.*, 64 Md.App. 222, 494 A.2d 947 (Md.App. 1985), which construed a Maryland statute that required a tenant to pay all past due accured rents into an escrow account when such tenant

is involved in a summary eviction proceeding and prays for a jury trial. In holding such statute unconstitutional, the court first noted that:

> Trial by jury has been described as "the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." Thomas Jefferson, *Letter to Thomas Paine* (1789). 494 A.2d at 948

The court then went on to explore the extent to which a right to trial by jury could be curtailed in an eviction proceeding:

> We agree with appellant that this statute, to the extent that it provides for an escrow of past due rents, amounts to more than merely a reasonable regulation of one's right to a jury trial. We believe that it interferes with this right to the extent that the right becomes meaningless. We explain.
>
> Requiring the tenant to escrow "all accrued and unpaid rents and all rents due" presupposes a determination that the money is owed. "The word *due* always imports a fixed and settled obligation or liability. . . ." Black's Law Dictionary 5th ed. 1979) p. 448 (emphasis added). Section 8-118 permits the district court, ex parte and without constraints, to order an escrow of accrued and unpaid rent. This necessarily requires the court to determine what money is owed to the landlord as of the time the jury trial is prayed. That unfettered and unconditional determination requires a factual finding which impermissibly encroaches upon the function of the jury.
>
> Moreover, the practical effect of a district court order, under §8-118, is to require that a party prepay any possible judgment in order to obtain a jury trial. This places a premium on the exercise of this right in the

context of landlord-tenant action. While no other jurisdiction has so encumbered a civil litigant's right to a jury trial, we believe that requiring such a premium for the exercise of one's right to a jury trial is unreasonable. We realize that the legitimate purpose of summary eviction proceedings, i.e., accelerated relief, is often frustrated by a prayer for jury trial. We believe, however, that requiring an escrow of past due rents provides a secure fund for the landlord, something to which neither he nor any other litigant is otherwise entitled and something which far exceeds previously defined "reasonable regulation" of the right to a jury trial.

* * *

In any event, the question is as to the reasonableness of the regulation. As to the issue immediately before us (accrued and unpaid rents), the price is exorbitant. It is, indeed, a different situation where, as here, the price to be paid makes the right practically unavailable. Under §8-118, a tenant, wishing a jury trial, can be ordered to repay what amounts to all monies allegedly owed; this is not the same as requiring that same party to pay the additional costs attendant on a jury trial. The payment, in the former instance, becomes a premium on the exercise of one's inviolate right to a civil jury.

Consequently, because the statute requires a predetermination of the amount owed and because it places a premium on the exercise of one's right to a civil jury, we believe that §8-118, to the extent that it provides for the payment of past due (accrued) rents into escrow, is an unreasonable, and, therefore, unconstitutional interference with that right. 494 A.2d at 951-953.

One of the primary reasons the *Lucky Ned Pepper* court held that the statute under review was unconstitutional concerned the manner in which the amount of past due rent required to be deposited, if any, was calculated. As noted by the court, the statute in effect required that the trial court determine what money was owed to the landlord as of the time that the jury trial was requested. Such an unfettered and unconditional determination, however, required a factual finding which impermissibly encroached upon the function of the jury. This is the identical argument that was presented by KARSTETER to the Dade County Court (See pp. 15-16 of this Petition, *supra*), and which was also raised in each appellate level of the Florida Court System. Such argument, however, was totally rejected, and KARSTETER was required to deposit the amount of rent that was alleged in GRAHAM's complaint into the court registry.

KARSTETER has consistently argued that he was entitled to have a jury determine, *inter alia*, whether the $1,460.00 that the court ordered posted, was in fact owed, or whether he was entitled to continue to receive rent-free housing for the remaining length of his employment agreement with MIAMI LAKES INN and GRAHAM. The provisions of §83.60(2) *Fla.Stat.* deprived KARSTETER of this right, and required that he deposit the rent which GRAHAM alleged was owed, or alternatively the amount which the court determined should be deposited which in this instance was one and the same thing. As a consequence, §83.60(2) *Fla.Stat.* was clearly unconstitutional as a denial of due process.

When the State of Florida created a right to jury trial, which it guaranteed inviolate to its citizens, due process required that KARSTETER's demand for jury trial be honored and granted. To the extent that it deprived KARSTETER of such jury trial, §83.60(2) *Fla.Stat.* was clearly unconstitutional as a denial of due process of law, and

the opinion of Florida's Third District Court of Appeal, holding to the contrary, should be reversed and quashed.

C. Issue of Mootness.

When KARSTETER brought his appeal in the Circuit Court Appellate Division, and filed his brief, GRAHAM argued that the appeal should be dismissed because the issue had become moot through the passage of time and events. It was argued by GRAHAM that the eviction had been concluded, that KARSTETER was out of the demised premises and that "no practical result could be obtained by reviewing the questions presented". KARSTETER, however, pointed out that there is one very significant exception to the mootness doctrine, which the present proceeding fell well within.

In *Moore v. Ogilvie*, 394 U.S. 814, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969), the court reviewed a declaratory judgment action seeking a determination that sections of an Illinois election statute were unconstitutional. By motion to dismiss, it was urged that by the time that the matter came to be heard, the particular election which was involved had already been held and that, therefore, there was no possibility of granting any relief. The court, however, relying upon its earlier decision in *Southern Pacific Terminal Co. v. I.C.C.*, 219 U.S. 498, 515, 31 S.Ct. 279, 283, 55 L.Ed. 310, 316 (1911), recognized that the challenged statute would control future elections, and that the problem was, therefore, "capable of repetition, yet evading review." There was a need for resolution of the problem, and as such, the matter was not dismissed as moot.

The same result was obtained in *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), wherein the court in considering a constitutional challenge to a state durational residence law for voters in Tennessee, specifically stated that:

> At the time the opinion below was filed, the next election was to be held in November, 1970, at which time Blumstein would have met the three-month part of Tennessee's durational residency requirements. The District Court properly rejected the State's position that the alleged invalidity of the three-month requirement had been rendered moot, and the State does not pursue any mootness argument here. Although appellee can now vote, the problem to voters posed by the Tennessee residence requirements is " 'capable of repetition, yet evading review.' " *Moore v. Ogilvie*, 394 U.S. 814, 816, 89 S.Ct. 1493, 1494, 23 L.Ed.2d 1 (1969); *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515, 31 S.Ct. 279, 283, 55 L.Ed. 310 (1911). 405 U.S. at 333, n. 2, 92 S.Ct. at 998, 31 L.Ed.2d at 279.

See also: *Rosario v. Rockefeller*, 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973); *Democratic Party of the U.S. v. Wisconsin*, 450 U.S. 107, 101 S.Ct. 1010, 67 L.Ed.2d 82 (1981).

The abrogation of the mootness doctrine in situations where a problem exists that is "capable of repetition, yet evading review" has also been recognized in cases involving other issues. In *Roe v. Wade*, 410 U.S. 113, 125, 93 S.Ct. 705, 713, 35 L.Ed.2d 147, 161 (1973), wherein Texas' anti-abortion statutes were held unconstitutional, this Court recognized that: "Pregnancy provides a classic justification for conclusion of non-mootness. It truly could be 'capable of repetition, yet evading review.' "

Citing the elections and pregnancy cases as authority, the Court in *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 126, 94 S.Ct. 1694, 1700, 40 L.Ed.2d 1, 10 (1974), indicated that, in determining whether a case is one which invokes an issue "capable of repetition, yet evading review," the important ingredient is the existence of "governmental action directly affecting, and continuing to affect, the behavior of citizens in our society". The case involved laws

affecting economic strikes by employees against an employer, and with respect to such strikes, the Court stated that:

> . . . the great majority of economic strikes do not last long enough for complete judicial review of the controversies they engender. U.S. Dept. of Labor, Bureau of Labor Statistics, Analysis of Work Stoppages 1971, Table A-3, p 16 (1973). A strike that lasts six weeks, as this one did, may seem long, but its termination, like pregnancy at nine months and elections spaced at year-long or biennial intervals, should not preclude challenge to state policies that have had their impact and that continue to force, unabated and unreviewed. The judiciary must not close the door to the resolution of the important questions these concrete disputes present. 416 U.S. at 126, 94 S.Ct. at 1700, 40 L.Ed.2d at 10-11.

The same exception to the mootness doctrine was applied in *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976), which reviewed an order that restrained the news media from publishing or broadcasting accounts of confessions or admissions made by a defendant in a criminal proceeding. At the time of review the restraining order had expired. It was recognized, however, that such restraining orders relating to the news media are generally short lived, and if the court were to decline to address the issue, the dispute would evade review. The court therefore held that the matter was not moot.

In addition to arguing that the issues raised by KARSTETER were moot, GRAHAM also argued that KARSTETER had waived his appellate rights, since he chose to comply with the Final Judgmet of the trial court. Such a suggestion was ludicrous under Florida law.

In *Barry v. Robson*, 65 So.2d 739 (Fla. 1953), it was recognized that a judgment is the means by which a court renders its decision. In eviction proceedings, Florida law

provides that when a judgment has been entered in favor of the landlord, an expedited procedure is followed to place such landlord in possession of the premises. This procedure is set forth in §83.62 *Fla.Stat.*, which provides that:

> **83.62 Remedies; restoration of possession to landlord.**—In an action for possession, after entry of judgment in favor of the landlord, the clerk shall issue a writ to the sheriff describing the premises and commanding him to put the landlord in possession after 24 hours' notice conspicuously posted on the premises.

Faced with this statutory provision, KARSTETER's vacating the premises could hardly be said to be voluntary, when the alternative was to wait for the Sheriff to show up on his front doorstep and physically remove him, his wife and possessions from the premises, and leave them all stranded in the street.

In *Kanter v. Safran*, 68 So.2d 553 (Fla. 1953), and in *Routal Corp., N.V., Inc. v. Ottati*, 391 So.2d 308 (Fla. 4th DCA 1980), it was recognized that there are two forms of surrender of possession of rental or leased property. In *Routal Corp., N.V., Inc. v. Ottai, supra*, the court described these forms of surrender as follows:

> The first, express surrender, requires an express agreement between the parties and we clearly do not have that here. The second, surrender by operation of law, may be implied from certain circumstances and will depend upon the facts of such case. Ottati received a notice requiring him to vacate by a certain date or face the legal consequences. A jury could reasonably infer that his compliance was therefore coerced and not voluntary. 391 So.2d at 309.

Considering the circumstances under which KARSTETER vacated the premises in question, it is clear that he was not leaving voluntarily, or of his own volition. This is particularly evident in that he has continuously

objected to his being forced out of possession, even through the present proceeding.

It should be recognized that Florida's Third District Court of Appeal, which upheld the constitutionality of §83.60(2) *Fla.Stat.*, apparently declined to accept GRAHAM's mootness argument, since it specifically considered KARSTETER's argument as presented in his petition and at oral argument. Additionally, since the present cause of action was instituted, the State of Florida has tightened the provisions of §83.60(2) *Fla.Stat.* [See p. 1 of this Petition, **supra**]. It is thus patently obvious that, in eviction proceedings, the State of Florida, through §83.60(2) *Fla.Stat.*, intends to continue to deprive tenants of their right to due process of law, to defend and be heard. As a consequence the matters raised at every stage of the Florida Court System, and as raised herein, are timely, pertinent, compelling and of great public importance. Such issues are clearly not moot.

CONCLUSION

Petitioner, KARSTETER, believes that, from the authorities cited in this Petition for Writ of Certiorari, §83.60(2) *Fla.Stat.* is clearly unconstitutional in that it deprives tenants in general, and deprived KARSTETER in particular, of the fundamental right of due process of law. As a consequence, it is respectfully requested that this Court accept jurisdiction of this cause and grant the Petition for Writ of Certiorari herein. It is further respectfully requested that if this Petition for Writ of Certiorari be granted, that the court reverse the opinion of Florida's Third District Court of Appeal, which specifically held §83.60(2) *Fla.Stat.* to be constitutional, and order this cause to be remanded for entry of appropriate orders relating to the unconstitutionality of such statute by the Florida courts. Additionally it is prayed that all awards of attorneys fees that have been entered against KARSTETER be reversed, and that an appropriate award of attorneys fees and costs be entered in his favor, as a consequence of his being forced to proceed through the various courts of Florida and the filing of the present petition, in accordance with §§83.48 and 59.46 *Fla.Stat.* (App. R-1).

Respectfully submitted,

STEVEN A. EDELSTEIN, ESQ.
RESS, GOMEZ, ROSENBERG,
HOWLAND & MINTZ, P.A.
1700 Sans Souci Boulevard
North Miami, Florida 33181
(305) 893-5506

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) true copies of the Petition for Writ of Certiorari were mailed to Elizabeth W. Joyce, Esq., Wisehart & Joyce, P.A., Attorneys for Respondent, 2840 S.W. Third Avenue, Miami, Florida 33129, and to Jerry Curington, Esq., Assistant Attorney General, Department of Legal Affairs, The Capital, Tallahassee, Florida 32301, this 16th day of September, 1988.

STEVEN A. EDELSTEIN, ESQ.

88-473(2)

Supreme Court, U.S.
FILED
SEP 17 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO.

in the

Supreme Court

of the

United States of America

OCTOBER TERM, 1988

CHRIS KARSTETER,

Petitioner,

vs.

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Respondents.

**On Petition for Writ of Certiorari
to the District Court of Appeal of Florida
Third District, Review Denied By
The Supreme Court of Florida**

APPENDIX OF PETITIONER CHRIS KARSTETER

STEVEN A. EDELSTEIN, ESQ.
RESS, GOMEZ, ROSENBERG,
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1700 Sans Souci Boulevard
North Miami, Florida 33181

Attorney for Petitioner
Chris Karsteter

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APPENDIX A

Form 4A

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA

CASE NO. 86-3797 CC23

CIVIL DIVISION

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION,
a Florida corporation

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN and COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION

Defendant.

COMPLAINT

FOR REMOVAL OF TENANT FOR
NON-PAYMENT OF RENT

ELIZABETH W. JOYCE
FLORIDA BAR #317489

SERVICE COPY

Plaintiff sues Defendant and alleges:

1. This is an action for removal of Tenant from real property in Dade County, Florida, as authorized by Florida Statutes §83.59.

2. Plaintiff is the Landlord and the below named Defendant is the Tenant in possession of the following described real property in said County which is a dwelling unit:

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC. f/k/a MIAMI LAKES INN and COUNTRY CLUB, a Florida corporation AND CHRIS KARTETER AND ALL OTHERS IN POSSESSION
15461 Durnford Drive
Miami Lakes, Florida

3. The term of the rental agreement has expired by default in payment of rent and three days notice in writing requiring the payment of such rent or the possession of the premises has been duly served but Defendant refuses to do either together with all persons claiming by, through or under the Defendant. A copy of the said notice showing the date of service thereof, the amount of rent due as of the date of service, the rental rate and period, and the time each payment is due is attached to this Complaint marked "Plaintiff's Exhibit A", and is hereby made a part hereof. A copy of the said rental agreement is attached as "Plaintiff's Exhibit B."

4. Defendant is not in the military service of the United States or any of its allies.

5. Plaintiff is entitled to an award of attorneys' fees pursuant to Florida Statutes §83.48.

6. Plaintiff is entitled to the Summary Procedure provided in Chapter 51 of the Florida Statutes.

WHEREFORE, Plaintiff demands Judgment for possession of the property, costs and reasonable attorneys' fees.

MALCOLM B. WISEHEART, JR., P.A.
Attorneys for Plaintiff
2840 S. W. Third Avenue
Miami, Florida 33129
(305) 285-1222

By: /s/ Elizabeth W. Joyce

STATE OF FLORIDA :

: ss

COUNTY OF DADE :

BEFORE ME, the undersigned authority, personally appeared Elizabeth W. Joyce, who, after first being duly sworn, deposes and says that (she) is the Attorney for the for the Plaintiff herein and that (she) has read the foregoing Complaint and that the contents thereof are true and correct.

SWORN TO AND SUBSCRIBED before me this 6th day of June, 1986.

Caridad [illegible]

Notary Public,
State of Florida at Large
My Commission Expires: 1/27/90

PLAINTIFF'S EXHIBIT A

THREE-DAY NOTICE

TO Miami Lakes Inn & Country Club—Chris Karsteter AND ALL OTHERS IN POSSESSION OF 15461 Durnford Dr. Miami Lakes, Florida 33014 and located in Dade County Florida.

YOU ARE HEREBY NOTIFIED THAT YOU ARE INDEBTED TO ME IN THE SUM OF $730.00 DOLLARS FOR THE RENT AND USE OF THE PREMISES DESCRIBED ABOVE AND NOW OCCUPIED BY YOU.

Period for which rent was due	Amount Paid	Balance Due
June Rent		730.00

I DEMAND PAYMENT OF THE SAID RENT OR POSSESSION OF THE PREMISES WITHIN THREE (3) DAYS (EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS), FROM THE DATE OF DELIVERY OF THIS NOTICE.

TO WIT: ON OR BEFORE THE 5 DAY OF June, 1986. 12:00 pm.

YOUR RENT IS PAYABLE FROM MONTH TO MONTH, DUE ON THE FIRST OF EACH MONTH, IN THE AMOUNT OF $730.00.

THIS NOTICE IS GIVEN TO YOU PURSUANT TO FLORIDA STATUES SEC. 83.56(3).

PLEASE BE GOVERNED ACCORDINGLY.

Landlord:

THE GRAHAM COMPANIES
MEADOW WALK APARTMENTS
15690 BULL RUN ROAD
MIAMI LAKES, FL 33014
821-1133

☐ THIS NOTICE WAS SERVED UPON THE PERSON OWING THE RENT.

☒ THE PERSON OWING SAME WAS ABSENT FROM HIS LAST USUAL PLACE OF RESIDENCE, AND THIS NOTICE WAS LEFT AT SAID RESIDENCE BY POSTING.

BY /s/ Helen Wallace DATE: 6-2-86 ☐ A.M. ☒ P.M.

Three-day Notice 101 6/85

PLAINTIFF'S EXHIBIT B

LEASE RENEWAL

MIAMI LAKES EAGLE NEST DUPLEXES
Miami Lakes, Florida 33014

LEASE AGREEMENT

THIS LEASE is entered into on DECEMBER 26, 1985, between THE SENGRA CORPORATION, a Florida Corporation, hereafter called "landlord" and MIAMI LAKES INN & COUNTRY CLUB – CHRIS KARSTETER jointly and severally, hereafter called "tenant".

Landlord rents to tenant for a term beginning on OCTOBER 1, 1985, and ending on SEPTEMBER 30, 1986, those premises located in Dade County, Florida as follows:

Miami Lakes Eagle Nest Duplexes
15461 DURNFORD DRIVE [901]
Miami Lakes, Florida, 33014

In consideration of said leasing, it is agreed between the parties as follows:

1. RENT. Tenant agrees to pay, in advance and without demand, on the first day of each month during the term of this lease, a monthly rent of $730.00, without any set off, abatement or reduction, plus any taxes based on tenant's occupancy. The monthly rent is payable at the office of THE SENGRA CORPORATION, 14340 NORTHWEST 60TH AVENUE, MIAMI LAKES, FLORIDA 33014. If the rent remains unpaid on the 5th day of the month for which it is due, tenant agrees, in addition to any other remedies available to landlord, to pay, upon demand by landlord, additional rent of $10.00. If payment of rent, or any other other item, is made by a check which does not clear for any reason, tenant agrees, upon demand by landlord, to immediately redeem said check from landlord, in cash, and to pay additional rent of the greater of Five Dollars ($5.00) or 5% of said check.

2. OCCUPANCY AND USE OF PREMISES. Tenant agrees that said premises shall be used only for residential purposes the tenant and that no other person(s) other than the tenant shall reside in the premises, except the following named persons:_____

3. SECURITY DEPOSIT. Upon the signing of this lease, tenant has deposited with landlord $ NONE, by check, as a security deposit which will be held by the landlord to secure the performance by the tenant of all the covenants and conditions of this lease. Upon termination of this lease, default by the tenant, or the vacating or abandonment of the premises by the tenant, the security deposit will be applied against any unpaid rental and any expenses incurred by the landlord to include, but not limited to, the following: the expense of re-renting, cleaning, re-decorating, repairing, loss of rent, loss of bargain, replacing any keys or locks, and any other expenses for which the tenant may be liable under this lease. If no unpaid rental or expenses are to be deducted from the security deposit it will be returned to the tenant. Tenant shall not have the right to apply the security deposit as payment for rent. Landlord has posted a surety bond with the Clerk of the Circuit Court of Dade County, Florida, to insure the proper handling of the security deposit; and accordingly, the landlord will comingle the security deposit with its other funds. Landlord will pay 5% per annum simple interest on any securty deposit held longer than 6 months, which interest shall be paid or credited to tenant at least once annually.

4. REPAIRS AND MAINTENANCE. Tenant has inspected the premises and personal property and, by taking possession, accepts same in the condition they are now in, "as is", and agrees they are suitable for the use intended. Landlord will make repairs to the interior and exterior of the building not caused by tenant's acts or omissions upon receipt of written notice from the tenant of any defective condition.

5. TENANT'S CARE OF PREMISES. Tenant shall at all times during the term of this lease (1) comply with all obligations imposed on tenant by applicable provisions of the building, housing and health codes; (2) keep the premises clean and sanitary including the removal of waste and garbage; (3) not destroy, damage, impair, misuse, waste, or remove any part of the premises or any property or facilities belonging to the landlord or other tenants; (4) refrain from doing anything which will in any way increase the fire risk or fire insurance premiums on the premises or any part thereof; and (5) conduct himself, and require all other persons on the premises with his consent to conduct themselves in a manner that does not disturb his neighbors, constitute a breach of the peace, or violate any law.

6. ASSIGNMENT AND SUBLETTING. Tenant shall not assign or sublease any or all of the premises or permit the same to be used or occupied by others without the prior written consent of the landlord. Any consent by the landlord to any assignment or sublease shall apply only to the specific transaction thereby authorized.

7. DESTRUCTION OF OR DAMAGE TO THE PREMISES. If the premises are damaged or destroyed other than by the wrongful or negligent act or omission of the tenant, so that the enjoyment of the premises is substantially impaired, this lease shall be terminated and the rent pro-rated as of the date of the damage or destruction.

8. PERSONAL PROPERTY OF TENANT. If the premises, or any part thereof, are damaged by reason of the installation or removal of tenant's property, tenant agrees to repair the damages at its own expense. Landlord is not responsible for any damage to tenant's property except damage caused by the negligent acts or omissions of landlord. Landlord shall have the right to store or otherwise dispose of any property remaining on the premises after termination of this lease or upon abandonment or vacating by tenant. Any such property left on or about the premises shall be considered

landlord's property and the title shall be conclusively presumed as having vested in landlord in disposing of said property. Landlord shall have the right to sell same at public or private sale. Tenant releases all claim to said property.

9. ALTERATIONS. The tenant shall not make any alterations to the premises or personalty of landlord without the prior written consent of landlord, and any completed alterations consented to are subject to final approval by the landlord. All alterations shall become the property of the landlord upon installation and shall be surrendered at the termination of this lease. The landlord shall have the right to remove all alterations in violation of this paragraph at any time and tenant agrees to pay the cost of such removal. Tenant will not place any signs on the building or adjoining premises.

IT IS EXPRESSLY UNDERSTOOD THAT, IN ADDITION TO THE TERMS AND CONDITIONS ON THIS PAGE, THIS LEASE IS SUBJECT TO THE TERMS AND CONDITIONS OF LEASE STATED ON THE REVERSE SIDE HEREOF.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

LANDLORD: THE SENGRA CORPORATION

/s/ BETH G. MARTINEZ

BY: /s/ C. DAVID YOUNTS (SEAL)

(Its Duly Authorized Agent)

TENANT:

BY: /s/ C. DAVID YOUNTS (SEAL)

IN THE COUNTY COURT IN AND FOR
DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 86-3797 (CC-23)
Fla. Bar No. 437166

THE GRAHAM COMPANIES, f/k/a
THE SENGRA CORPORATION, etc.,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, etc., et al.,

Defendants.

ANSWER OF DEFENDANT, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC.

Defendant, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, f/k/a MIAMI LAKES INN AND COUNTRY CLUB, in answer to Plaintiff's Complaint states that it:

1. Admits all of the allegations of the complaint.

GREENBERG, TRAURIG, ASKEW,
HOFFMAN, LIPOFF, ROSEN
& QUENTEL, P.A.
Attorneys for Defendant,
MIAMI LAKES INN
Brickell Concours
1401 Brickell Avenue
Miami, Florida 33131
Ph. 305/579-0500

By: /s/ MARIANNE A. VOS
Marianne A. Vos

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was hand-delivered to Elizabeth W. Joyce, Esq., Wiseheart and Joyce, P.A., Attorneys for Plaintiff, 2840 SW Third Avenue, Miami, FL 33129 and Roland Gomez, Esq., Ress, Gomez, Rosenberg, & Howland, P.A., 1700 Sans Souci Blvd., North Miami, FL 33181 this 24th day of June, 1986.

/s/ MARIANNE A. VOS

Marianne A. Vos

IN THE COUNTY COURT IN AND FOR
DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 86-3797 (CC-23)
Fla. Bar No. 437166

THE GRAHAM COMPANIES, f/k/a
THE SENGRA CORPORATION, etc.,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, etc., et al.,

Defendants.

STIPULATION FOR ENTRY OF FINAL JUDGMENT

Defendant, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, f/k/a MIAMI LAKES INN AND COUNTRY CLUB, by and through its undersigned counsel, hereby stipulates to the entry of Final Judgment against it in the above entitled action.

GREENBERG, TRAURIG, ASKEW,
HOFFMAN, LIPOFF, ROSEN
& QUENTEL, P.A.
Attorneys for Defendant,
Miami Lakes Inn
Brickell Concours
1401 Brickell Avenue
Miami, Florida 33131
Ph. 305/579-0500

By: /s/ MARIANNE A. VOS
Marianne A. Vos

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was hand-delivered to Elizabeth W. Joyce, Esq., Wiseheart and Joyce, P.A., Attorneys for Plaintiff, 2840 SW Third Avenue, Miami, FL 33129 and Roland Gomez, Esq., Ress, Gomez, Rosenberg, & Howland, P.A., 1700 Sans Souci Blvd., North Miami, FL 33181 this 24th day of June, 1986.

/s/ MARIANNE A. VOS

Marianne A. Vos

APPENDIX B

IN THE COUNTY COURT IN AND FOR
DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO: 86-3797 CC23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION,
a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN and COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

CHRIS KARSTETER AND
ALL OTHERS IN POSSESSION,

Counterclaimant,

vs.

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION,
a Florida corporation,

Counterdefendants.

CHRIS KARSTETER
AND ALL OTHERS IN POSSESSION,

Crossclaimants,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN and COUNTRY CLUB, a Florida corporation,

Crossdefendants.

ANSWER TO COMPLAINT FOR REMOVAL OF TENANT FOR NON-PAYMENT OF RENT

Defendants, CHRIS KARSTETER AND ALL OTHERS IN POSSESSION, by and through their undersigned counsel herewith answer Plaintiff's Complaint for Removal of Tenant for Non-Payment of Rent and state the following:

1. They deny the allegations set forth in paragraph 1.

2. The admit that the Defendants, CHRIS KARSTETER AND ALL OTHERS IN POSSESSION, is the tenant in possession of the premises located at 15461 Durnford Drive, Miami Lakes, Florida, but deny each and every other allegation set forth in paragraph 2.

3. They deny the allegations set forth in paragraph 3.

4. They admit the allegations set forth in paragraph 4.

5. They deny the allegations set forth in paragraph 5.

6. They deny the allegations set forth in paragraph 6.

AFFIRMATIVE DEFENSES

As and for Affirmative Defenses the Defendants, CHRIS KARSTETER AND ALL OTHERS IN POSSESSION, would state the following:

7. At all times material hereto the MIAMI LAKES INN ATHLETIC CLUB AND GOLF RESORT, INC. f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation [hereinafter "MIAMI LAKES INN"] was and is a wholly owned subsidiary of Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, [hereinafter "THE GRAHAM COMPANIES], and the intermingling of officers, directors, managing agents and operations of the said Defendant, MIAMI LAKES INN and the said Plaintiff, THE GRAHAM COMPANIES is such that the corporate veil which exists between same should be pierced for reason that they have operated in all respects as

one and the same entity. As a consequence, the Complaint fails to state a cause of action insofar as an entity cannot bring suit against itself for removal of tenant.

8. At all times material hereto the Defendant, CHRIS KARSTETER [herinafter "KARSTETER"] had in full force and effect a contract of employment with the Co-Defendant, MIAMI LAKES INN, which provided for employment on an annual basis, and which contract included the provision of rent free housing. As a consequence, there is no rent due from KARSTETER to either the Co-Defendant, MIAMI LAKES INN, or the Plaintiff, THE GRAHAM COMPANIES. The conditions of such contract for employment are set forth in an August 20, 1984 letter from C. David Younts to KARSTETER, a copy of which is attached hereto as Exhibit "1", and the period of employment is further set forth in the lease agreement of which there are two copies, which are attached hereto as Exhibits "2" and "3" respectively. It would further be shown that Exhibit "3" hereto is the same lease agreement which is attached as Exhibit "B" to the Plaintiff's Complaint.

9. At all times material hereto, Plaintiff, THE GRAHAM COMPANIES, ratified, accepted, approved, agreed to abide by, assumed, and/or accepted the assignment of the contract for employment of the Defendant, KARSTETER, as set forth in the August 20, 1984 letter, a copy of which is attached hereto as Exhibit "1" and the lease agreements, copies of which are attached hereto as Exhibits "2" and "3". As a consequence, Plaintiff, THE GRAHAM COMPANIES, has waived any and all rights to receipt of rental payments for reason that the Defendant, KARSTETER, is entitled, pursuant to such contract of employment, to the provision of rent free housing by MIAMI LAKES INN, and by THE GRAHAM COMPANIES, jointly and severally.

10. Plaintiff, THE GRAHAM COMPANIES, failed to comply with the provisions of §83.57 *Fla. Stat.* which provides for the termination of tenancies. To this extent it would be

shown that the term of the tenancy on the property in question was established by the lease agreement as being one year extending from October 1, 1985 through September 30, 1986, and pursuant to the provisions of §83.57 *Fla. Stat.*, written notice of the termination of such lease was required to be provided to the Defendant, KARSTETER, not less then 60 days prior to the end of the term of his occupancy. Plaintiff, THE GRAHAM COMPANIES, has totally failed to comply with this requirement for reason that the only notice provided to the Defendant, KARSTETER, is a "Speed Letter" from John Halley dated May 7, 1986, which "Speed Letter" has indicated a termination of the lease agreement, together with an increase in the amount of rent from $730.00 a month as indicated in the lease agreements attached hereto as Exhibits "2" and "3", to $740.00 a month, as indicated in the "Speed Letter"; and an additional provision requiring a security of $1,100.00, which under the lease agreements attached hereto as Exhibits "2" and "3" is indicated as "NONE". A true copy of the "Speed Letter" dated 5/7/86 is attached hereto as Exhibit "4".

11. Plaintiff, THE GRAHAM COMPANIES, has brought the within cause of action as a "retaliatory measure" in violation of §83.64 *Fla. Stat.*, in that it has discriminated against the Defendant, KARSTETER, by treating the said Defendant differently as to the rent charged for the housing than is required under the letter agreement attached hereto as Exhibit "1" and the lease agreements attached hereto as Exhibit "2" and "3".

12. Plaintiff, THE GRAHAM COMPANIES, has acted in "bad faith" in the filing of the within Complaint for Removal of Tenant for Non-Payment of Rent in direct violation of §83.44 *Fla. Stat.*, and in further violation of §83.64 *Fla. Stat.*

13. The provisions of §83.60(2) *Fla. Stat.* are inapplicable to the within cause of action for reason that the agreement for the employment of the Defendant, KARSTETER, by the

Co-Defendant, MIAMI LAKES INN, specifically provides that housing is without charge, and the period of such employment is specified by the lease agreements, copies of which are attached hereto as Exhibit "2" and "3".

14. The provisions of §83.60(2) *Fla. Stat.* cannot be imposed upon the Defendant, KARSTETER, for reason that it is unconstitutional as a denial of free access to the courts.

15. At all times material hereto the Co-Defendant, MIAMI LAKES INN, had in full force and effect an Employee Handbook that set forth Special Regulations which could result in termination of employment. The Co-Defendant, MIAMI LAKES INN, and the Plaintiff, THE GRAHAM COMPANIES, jointly and severally, and collusively, have sought to terminate the employment of the Defendant, KARSTETER, for reasons not included within the special regulations set forth in the Employee Handbook, a true copy of which is attached hereto as Exhibit "5".

16. Defendant, KARSTETER, has been forced to retain the Law Offices of Ress, Gomez, Rosenberg, Howland & Mintz, P.A. to defend him in the wrongful eviction action which has been instituted by Plaintiff, THE GRAHAM COMPANIES, and has obligated himself to pay attorneys' fees with respect to same. As a consequence, Defendant, KARSTETER, is entitled to an award of attorneys' fees in accordance with the provisions of §83.48 *Fla. Stat.*

COUNTERCLAIM

Counterclaimant, KARSTETER, by and through his undersigned counsel herewith sues the Counterdefendant, THE GRAHAM COMPANIES and states the following:

GENERAL ALLEGATIONS

1. At all times material hereto, Counterclaimant, CHRIS KARSTETER, was a citizen and resident of Dade County, Florida.

2. At all times material hereto the Counterdefendant, THE GRAHAM COMPANIES, was a Florida corporation.

3. This is an action for damages in excess of $5,000.00 exclusive of interest and costs and for Declaratory Judgment.

4. At all times material hereto, Counterdefendant, THE GRAHAM COMPANIES, owned MIAMI LAKES INN, a Florida corporation, as a wholly owned subsidiary; however, the inter-relationship of officers and directors between the two companies, as well as the normal operations of THE GRAHAM COMPANIES as the party responsible for payment of the salaries of all employees of MIAMI LAKES INN, as well as the provision of additional benefits, including the provision of all insurance benefits for employees of the MIAMI LAKES INN, and the provision of charge cards and accounts to employees of the MIAMI LAKES INN, was such that the corporate veil between the said Counterdefendant, THE GRAHAM COMPANIES, and its wholly owned subsidiary, MIAMI LAKES INN, should be pierced and the two entities should be determined to be one and the same, the same as if there had been no such corporate veil present.

COUNT I

BREACH OF CONTRACT

Counterclaimant, KARSTETER, realleges and reavers each and every allegation heretofor set forth in paragraphs 1 through 4 the same as if each such allegation was fully set forth herein, and additionally states that:

5. At all times material hereto the MIAMI LAKES INN had entered into an employment contract with Counterclaimant, KARSTETER, which employment contract is set forth collectively in a letter agreement dated August 20, 1984 and executed by C. David Younts, as President of MIAMI LAKES INN, and addressed to KARSTETER, a true copy of which has been attached hereto as Exhibit "1" and by reference made a part hereof, and in two lease agreements

extending from October 1, 1985 through September 30, 1986, true copies of which are attached hereto as Exhibits "2" and "3" respectively.

6. At all times material hereto, Counterdefendant, THE GRAHAM COMPANIES, ratified, accepted, approved, agreed to abide by, assumed and/or accepted the assignment of the contract for employment of the Counterclaimant, KARSTETTER, as set forth in the August 20, 1984 letter, a copy of which is attached hereto as Exhibit "1", and the lease agreements, copies of which are attached hereto as Exhibits "2" and "3".

7. At all times material hereto, Counterdefendant, THE GRAHAM COMPANIES, breached the employment contract for the employment of KARSTETER by the MIAMI LAKES INN by improperly terminating him in bad faith and by bringing an eviction proceeding against him in bad faith and without any basis therefore, and otherwise wrongfully depriving him of employment benefits he was entitled to.

8. As a direct and proximate result of the breach of the employment contract by THE GRAHAM COMPANIES, Counterclaimant, KARSTETER, has suffered damages including loss of income as specified under the contract, as well as such other benefits as are provided in such contract, including but not limited to participation in profit sharing, provision of rent free housing, provision of health insurance and provision of life insurance.

9. As a further consequence of the breach of contract by THE GRAHAM COMPANIES, Counterclaimant, KARSTETER, has been forced to retain the Law Offices of Ress, Gomez, Rosenberg, Howland & Mintz, P.A. to defend him in the wrongful eviction action which has been instituted by the Counterdefendant, THE GRAHAM COMPANIES, and has obligated himself to pay attorneys' fees with respect to same. As a consequence Counterclaimant, KARSTETER, is entitled to an award of attorneys' fees in accordance with the provisions of §83.48 *Fla. Stat.*

WHEREFORE, Counterclaimant, CHRIS KARSTETER, demands judgment for compensatory damages, attorneys' fees pursuant to §83.48 *Fla. Stat.,* interest, costs and such other relief as this Court may deem just and proper.

COUNT II

PUNITIVE DAMAGES

Counterclaimant, KARSTETER, realleges and reavers each and every allegation heretofor set forth in paragraphs 1 through 9 the same as if each such allegation was fully set forth herein, and additionally states that:

10. At all times material hereto, Counterdefendant, THE GRAHAM COMPANIES, conspired with its wholly owned subsidiary, MIAMI LAKES INN, to fraudulently discharge the Counterclaimant, KARSTETTER, from his employment, and did in fact carry out such conspiracy by terminating KARSTETER from his employment.

11. At all times material hereto, Counterdefendant, THE GRAHAM COMPANIES, acted in a gross and flagrant manner, evincing reckless disregard of the rights and well-being of the Counterclaimant, KARSTETER, and showed an entire want of care and conscious indifference to the consequences of its actions, showed willful, wanton, reckless or grossly careless disregard for the rights of KARSTETER, equivalent to an intentional violation of same.

WHEREFORE, Counterclaimant, KARSTETER, demands judgment for compensatory damages, punitive damages, attorneys' fees pursuant to §83.48 *Fla. Stat.,* interest, costs and such other relief as this Court may deem just and proper.

COUNT III

DECLARATORY JUDGMENT

Counterclaimant, KARSTETER, realleges and reavers each and every allegation contained in paragraphs 1 through

9 of this Complaint, the same as if each such allegation was fully set forth herein, and additionally states that:

12. Counterdefendant, THE GRAHAM COMPANIES, has acted jointly and severally with its wholly owned subsidiary, MIAMI LAKES INN, in terminating the employment of the Counterclaimant, KARSTETER, and in depriving him of benefits due under an employment contract, the terms of which are specified in multiple written documents including a letter dated August 20, 1984 and two lease agreements, copies of which are attached hereto as Exhibits "1", "2" and "3" respectively.

13. Counterdefendant, THE GRAHAM COMPANIES, has taken the position that it is a separate entity from its wholly owned subsidiary, MIAMI LAKES INN, and that there is no employment contract extant between the MIAMI LAKES INN and the Counterclaimant, KARSTETER.

14. Counterclaimant, KARSTETER, has taken the position that the Counterdefendant, THE GRAHAM COMPANIES, is in fact the same entity as the MIAMI LAKES INN and there is no corporate veil which separates the two such entities; and further that Counterdefendant, THE GRAHAM COMPANIES, has ratified, accepted, approved, agreed to abide by, assumed and/or accepted the assignment of the contract for employment of the Counterclaimant, KARSTETER.

15. Counterclaimant, KARSTETER, is in doubt as to his respective rights pursuant to the employment contract hereinabove alleged, and respectfully requests that this Court enter its Declaratory Judgment pursuant to the provisions of Chapter 86 *Fla. Stat.,* declaring that an employment contract exists between the Counterclaimant, KARSTETER, and the Counterdefendant, THE GRHAM COMPANIES, which extended through September 30, 1986, and that the said Counterclaimant is entitled to receive all of the benefits specified in the August 20, 1984 letter, a copy of which has been attached hereto as Exhibit "1".

16. There is a genuine actual dispute between the parties hereto concerning their respective rights, status and other equitable and legal relations under the letter of August 20, 1984 and the two lease agreements, copies of each of which have been attached hereto as Exhibits "1", "2" and "3" respectively.

WHEREFORE, Counterclaimant, KARSTETER, respectfully requests that this Court take jurisdiction of this cause and that it determine and declare the respective rights, status and responsibilities of the Counterclaimant, KARSTETER, and the Counterdefendant, THE GRAHAM COMPANIES, under the employment contract, the terms of which have been set forth in the August 20, 1984 letter and the two lease agreements which have been attached to this Complaint.

CROSSCLAIM

Crossclaimant, KARSTETER, by and through his undersigned counsel herewith sues the Crossdefendant, MIAMI LAKES INN, and states the following:

GENERAL ALLEGATIONS

1. At all times material hereto the Crossclaimant, KARSTETER, was a citizen and resident of Dade County, Florida.

2. At all times material hereto THE GRAHAM COMPANIES, was a Florida corporation.

3. At all times material hereto the Crossdefendant, MIAMI LAKES INN, was and is a wholly owned subsidiary of THE GRAHAM COMPANIES, however, the inter-relationship of officers and directors between the two companies, as well as the normal operations of THE GRAHAM COMPANIES as the party responsible for payment of the salaries of all employees of MIAMI LAKES INN, as well as the provision of additional benefits, including the provision of all insurance benefits for employees of the

MIAMI LAKES INN, and the provision of charge cards and accounts to employees of the MIAMI LAKES INN, was such that the corporate veil between THE GRAHAM COMPANIES, and its wholly owned subsidiary, Crossdefendant, MIAMI LAKES INN, should be pierced and the two entities should be determined to be one and the same, the same as if there had been no such corporate veil present.

4. This is an action for damages in excess of $5,000.00 exclusive of interest and costs and for Declaratory Judgment.

COUNT IV

BREACH OF CONTRACT

Crossclaimant, KARSTETER, realleges and reavers each and every allegation set forth in paragraphs 1 through 4 the same as if each such allegation was fully set forth herein, and additionally states that:

5. At all times material hereto, Crossdefendant, MIAMI LAKES INN had entered into an employment contract with the Crossclaimant, KARSTETER, which employment contract is set forth collectively in a letter agreement dated August 20, 1984 and executed by C. David Younts, as President of MIAMI LAKES INN, and addressed to KARSTETER, a true copy of which has been attached hereto as Exhibit "1" and by reference made a part hereof, and in two lease agreements extending from October 1, 1985 through September 30, 1986, true copies of which are attached hereto as Exhibits "2" and "3" respectively and by reference made a part hereof.

6. At all times material hereto, Crossdefendant, MIAMI LAKES INN, breached the employment contract for the employment of KARSTETER by improperly terminating him in bad faith and without any basis therefore, and in otherwise wrongfully depriving him of employment benefits he was entitled to.

7. As a direct and proximate result of the breach of the employment contract by Crossdefendant, MIAMI LAKES INN, Crossclaimant, KARSTETER, has suffered damages including loss of income as specified under the contract as well as such other benefits as are provided in such contract, including but not limited to participation in profit sharing, provision of rent free housing, provision of health insurance and provision of life insurance.

8. As a further consequence of the breach of contract by MIAMI LAKES INN, Crossclaimant, KARSTETER, has been forced to retain the Law Offices of Ress, Gomez, Rosenberg, Howland & Mintz, P.A. to defend him in the wrongful eviction action which has been instituted by THE GRAHAM COMPANIES, and has obligated himself to pay attorneys' fees. As a consequence Crossclaimant, KARSTETER, is entitled to receive attorneys' fees in accordance with the provisions of §83.48 *Fla. Stat.*

WHEREFORE, Crossclaimant, KARSTETER, demands judgment for compensatory damages, attorneys' fees pursuant to §83.48 *Fla. Stat.*, interest, costs and such other relief as this Court may deem just and proper.

COUNT V

PUNITIVE DAMAGES

Crossclaimant, KARSTETER, realleges and reavers each and every allegation heretofor set forth in paragraphs 1 through 8 the same as if each such allegation was fully set forth herein, and additionally states that:

9. At all times material hereto, Crossdefendant, MIAMI LAKES INN, conspired with its parent corporation, THE GRAHAM COMPANIES, to fraudulently discharge the Crossclaimant, KARSTETER, from his employment, and did in fact carry out such conspiracy by terminating the said KARSTETER from his employment.

10. At all times material hereto, Crossdefendant, MIAMI LAKES INN, acted in a gross and flagrant manner, evincing reckless disregard of the rights and well-being of the Crossclaimant, KARSTETER, and showed an entire want of care and conscious indifference to the consequences, showed willful, wanton, reckless or grossly careless disregard for the rights of KARSTETER, equivalent to an intentional violation of same.

WHEREFORE, Crossclaimant, KARSTETER, demands judgment for compensatory damages, punitive damages, attorneys' fees pursuant to §83.48 *Fla. Stat.*, interest, costs and such other relief as this Court may deem just and proper.

COUNT VI

DECLARATORY JUDGMENT

Crossclaimant, KARSTETER, realleges and reavers each and every allegation contained in paragraphs 1 through 8 of this Crossclaim, the same as if each such allegation was fully set forth herein, and additionally states that:

11. Crossdefendant, MIAMI LAKES INN, has acted jointly and severally with its parent corporation, THE GRAHAM COMPANIES, in terminating the empolyment of the Crossclaimant, KARSTETER, and in depriving him of benefits due under an employment contract, the terms of which are specified in multiple written documents including a letter dated August 20, 1984 and two lease agreements, copies of which are attached hereto as Exhibits "1", "2" and "3" respectively.

12. Crossdefendant, MIAMI LAKES INN, has taken the position that it is a separate entity from its parent corporation, THE GRAHAM COMPANIES, and that there is no employment contract extant between the MIAMI LAKES INN and the Crossclaimant, KARSTETER.

13. Crossclaimant, KARSTETER, has taken the position that the Crossdefendant, MIAMI LAKES INN, is in fact the

same entity as THE GRAHAM COMPANIES and there is no corporate veil which separates the two such entities.

14. The Crossclaimant is in doubt as to his respective rights pursuant to the employment contract hereinabove alleged, and respectfully requests that this Court enter its Declaratory Judgment pursuant to the provisions of Chapter 86 *Fla. Stat.*, declaring that an employment contract exists between the Crossclaimant, KARSTETER, and the Crossdefendant, MIAMI LAKES INN, which extended through September 30, 1986, and that the said Crossclaimant is entitled to receive all of the benefits specified in the August 20, 1984 letter, a copy of which has been attached hereto as Exhibit "1".

15. There is a genuine actual dispute between the parties hereto concerning their respective rights, status and other equitable and legal relations under the letter of August 20, 1984 and the two lease agreements, copies of each of which have been attached hereto as Exhibits "1", "2" and "3" respectively.

WHEREFORE, Crossclaimant, KARSTETER, respectfully requests that this Court take jurisdiction of this cause and that it determine and declare the respective rights, status and responsibilities of the Crossclaimant, KARSTETER, and the Crossdefendant, MIAMI LAKES INN, under the employment contract, the terms of which have been set forth in the August 20, 1984 letter and the two lease agreements which have been attached to this Complaint.

DEMAND FOR JURY TRIAL

Defendant/Counterclaimant/Crossclaimant, KARSTETER, demands trial by jury of all issues triable as of right.

I HEREBY CERTIFY that a true an correct copy of the above and foregoing was furnished to Marianne Vos, Esq., Greenberg, Traurig, Askew, et al., Brickell Concourse, 1401 Brickell Avenue, Miami, Florida 33131 and to Elizabeth W. Joyce, Esq., Wisehart and Joyce, P.A., 2840 S.W. Third Avenue, Miami, Florida 33129 by hand delivery this 26th day of June, 1986.

RESS, GOMEZ, ROSENBERG,
HOWLAND & MINTZ, P.A.
Attorneys for Karsteter
1700 Sans Souci Boulevard
North Miami, Florida 33181
(305) 893-5506

By: /s/ Steven A. Edelstein
STEVEN A. EDESLTEIN

Exhibit "1"

MIAMI LAKES INN
& COUNTRY CLUB

Miami Lakes Drive (N.W. 154th Street) and the Palmetto Expressway
Miami Lakes, Florida 33014. Phone Miami (305) 821-1150

C. David Younts
President

August 20, 1984

Mr. Christopher C. Karsteter
5411 Seward Park Avenue South
Seattle, Washington 98118

Dear Chris,

I am truly excited about your decision to join us at Miami Lakes.

I feel your talents, hard work, and attitude will help Miami Lakes Inn & Country Club meet our goals as well as yours.

Again Congatulations!

Per our conversation yesterday the terms of employment are as follows:

1. Salary—$37,500 per year (paid the last day of each month) Review of salary no later than May 31, 1984.

2. Profit Sharing—$5,000.00 payable August 1985.

3. Housing—Miami Lakes Inn & Country Club will provide. Gas, electric, water, and telephone are not included.

4. Health Insurance—
   a. Eligible on the first day of the coming month.
   b. Cost—Single Coverage Employee $30
      Husband and Wife $74
      Sengra pays 2/3 of insurance. Employee cost is 1/3 of total.

5. Life Insurance
   a. Eligible—1st day of coming month.
   b. Cost—no cost to employee.
   c. Value of policy 1½ base annual earnings.

Chris, enclosed you will find Miami Lakes Inn & Country Club Organization Chart for its Management Staffing and you will also see a detailed chart for the F & B Department along with their salaries.

I'll be in touch and look forward to seeing you the early part of October, if not sooner.

Give Theodora our regards.

Sincerely,

/s/ C. DAVID YOUNTS

C. David Younts
President

CDY/sl
Enclosures

Exhibit "2"

MIAMI LAKES EAGLE NEST DUPLEXES
Miami Lakes, Florida 33014

LEASE AGREEMENT

THIS LEASE is entered into on DECEMBER 26, 1986, between THE SENGRA CORPORATION, a Florida Corporation, hereafter called "landlord" and MIAMI LAKES INN & COUNTRY CLUB – CHRIS KARSTETER jointly and severally, hereafter called "tenant".

Landlord rents to tenant for a term beginning on OCTOBER 1, 1985, and ending on SEPTEMBER 30, 1986, those premises located in Dade County, Florida as follows:

Miami Lakes Eagle Nest Duplexes
15461 DURNFORD DRIVE
Miami Lakes, Florida, 33014

In consideration of said leasing, it is agreed between the parties as follows:

1. RENT. Tenant agrees to pay, in advance and without demand, on the first day of each month during the term of this lease, a monthly rent of $730.00, without any set off, abatement or reduction, plus any taxes based on tenant's occupancy. The monthly rent is payable at the office of THE SENGRA CORPORATION, 14340 NORTHWEST 60TH AVENUE, MIAMI LAKES, FLORIDA 33014. If the rent remains unpaid on the 5th day of the month for which it is due, tenant agrees, in addition to any other remedies available to landlord, to pay, upon demand by landlord, additional rent of $10.00. If payment of rent, or any other other item, is made by a check which does not clear for any reason, tenant agrees, upon demand by landlord, to immediately redeem said check from landlord, in cash, and to pay additional rent of the greater of Five Dollars ($5.00) or 5% of said check.

2. OCCUPANCY AND USE OF PREMISES. Tenant agrees that said premises shall be used only for residential purposes fo the tenant and that no other person(s) other than the tenant shall reside in the premises, except the following named persons:_____

3. SECURITY DEPOSIT. Upon the signing of this lease, tenant has deposited with landlord $ NONE, by check, as a security deposit which will be held by the landlord to secure the performance by the tenant of all the covenants and conditions of this lease. Upon termination of this lease, default by the tenant, or the vacating or abandonment of the premises by the tenant, the security deposit will be applied against any unpaid rental and any expenses incurred by the landlord to include, but not limited to, the following: the expense of re-renting, cleaning, re-decorating, repairing, loss of rent, loss of bargain, replacing any keys or locks, and any other expenses for which the tenant may be liable under this lease. If no unpaid rental or expenses are to be deducted from the security deposit it will be returned to the tenant. Tenant shall not have the right to apply the security deposit as payment for rent. Landlord has posted a surety bond with the Clerk of the Circuit Court of Dade County, Florida, to insure the proper handling of the security deposit; and accordingly, the landlord will comingle the security deposit with its other funds. Landlord will pay 5% per annum simple interest on any securty deposit held longer than 6 months, which interest shall be paid or credited to tenant at least once annually.

4. REPAIRS AND MAINTENANCE. Tenant has inspected the premises and personal property and, by taking possession, accepts same in the condition they are now in, "as is", and agrees they are suitable for the use intended. Landlord will make repairs to the interior and exterior of the building not caused by tenant's acts or omissions upon receipt of written notice from the tenant of any defective condition.

5. TENANT'S CARE OF PREMISES. Tenant shall at all times during the term of this lease (1) comply with all obligations imposed on tenant by applicable provisions of the building, housing and health codes; (2) keep the premises clean and sanitary including the removal of waste and garbage; (3) not destroy, damage, impair, misuse, waste, or remove any part of the premises or any property or facilities belonging to the landlord or other tenants; (4) refrain from doing anything which will in any way increase the fire risk or fire insurance premiums on the premises or any part thereof; and (5) conduct himself, and require all other persons on the premises with his consent to conduct themselves in a manner that does not disturb his neighbors, constitute a breach of the peace, or violate any law.

6. ASSIGNMENT AND SUBLETTING. Tenant shall not assign or sublease any or all of the premises or permit the same to be used or occupied by others without the prior written consent of the landlord. Any consent by the landlord to any assignment or sublease shall apply only to the specific transaction thereby authorized.

7. DESTRUCTION OF OR DAMAGE TO THE PREMISES. If the premises are damaged or destroyed other than by the wrongful or negligent act or omission of the tenant, so that the enjoyment of the premises is substantially impaired, this lease shall be terminated and the rent pro-rated as of the date of the damage or destruction.

8. PERSONAL PROPERTY OF TENANT. If the premises, or any part thereof, are damaged by reason of the installation or removal of tenant's property, tenant agrees to repair the damages at its own expense. Landlord is not responsible for any damage to tenant's property except damage caused by the negligent acts or omissions of landlord. Landlord shall have the right to store or otherwise dispose of any property remaining on the premises after termination of this lease or upon abandonment or vacating by tenant. Any such property left on or about the premises shall be considered

landlord's property and the title shall be conclusively presumed as having vested in landlord in disposing of said property. Landlord shall have the right to sell same at public or private sale. Tenant releases all claim to said property.

9. ALTERATIONS. The tenant shall not make any alterations to the premises or personalty of landlord without the prior written consent of landlord, and any completed alterations consented to are subject to final approval by the landlord. All alterations shall become the property of the landlord upon installation and shall be surrendered at the termination of this lease. The landlord shall have the right to remove all alternations in violation of this paragraph at any time and tenant agrees to pay the cost of such removal. Tenant will not place any signs on the building or adjoining premises.

IT IS EXPRESSLY UNDERSTOOD THAT, IN ADDITION TO THE TERMS AND CONDITIONS ON THIS PAGE, THIS LEASE IS SUBJECT TO THE TERMS AND CONDITIONS OF LEASE STATED ON THE REVERSE SIDE HEREOF.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

LANDLORD: THE SENGRA CORPORATION

BY: /s/ C. DAVID YOUNTS (SEAL)

(Its Duly Authorized Agent)

TENANT:

BY: /s/ C. DAVID YOUNTS (SEAL)

Exhibit "3"

MIAMI LAKES EAGLE NEST DUPLEXES
Miami Lakes, Florida 33014

LEASE AGREEMENT

THIS LEASE is entered into on DECEMBER 26, 1985, between THE SENGRA CORPORATION, a Florida Corporation, hereafter called "landlord" and MIAMI LAKES INN & COUNTRY CLUB – CHRIS KARSTETER jointly and severally, hereafter called "tenant".

Landlord rents to tenant for a term beginning on OCTOBER 1, 1985, and ending on SEPTEMBER 30, 1986, those premises located in Dade County, Florida as follows:

Miami Lakes Eagle Nest Duplexes
15461 DURNFORD DRIVE [901]
Miami Lakes, Florida, 33014

In consideration of said leasing, it is agreed between the parties as follows:

1. RENT. Tenant agrees to pay, in advance and without demand, on the first day of each month during the term of this lease, a monthly rent of $730.00, without any set off, abatement or reduction, plus any taxes based on tenant's occupancy. The monthly rent is payable at the office of THE SENGRA CORPORATION, 14340 NORTHWEST 60TH AVENUE, MIAMI LAKES, FLORIDA 33014. If the rent remains unpaid on the 5th day of the month for which it is due, tenant agrees, in addition to any other remedies available to landlord, to pay, upon demand by landlord, additional rent of $10.00. If payment of rent, or any other other item, is made by a check which does not clear for any reason, tenant agrees, upon demand by landlord, to immediately redeem said check from landlord, in cash, and to pay additional rent of the greater of Five Dollars ($5.00) or 5% of said check.

2. OCCUPANCY AND USE OF PREMISES. Tenant agrees that said premises shall be used only for residential purposes the tenant and that no other person(s) other than the tenant shall reside in the premises, except the following named persons:_____

3. SECURITY DEPOSIT. Upon the signing of this lease, tenant has deposited with landlord $ NONE, by check, as a security deposit which will be held by the landlord to secure the performance by the tenant of all the covenants and conditions of this lease. Upon termination of this lease, default by the tenant, or the vacating or abandonment of the premises by the tenant, the security deposit will be applied against any unpaid rental and any expenses incurred by the landlord to include, but not limited to, the following: the expense of re-renting, cleaning, re-decorating, repairing, loss of rent, loss of bargain, replacing any keys or locks, and any other expenses for which the tenant may be liable under this lease. If no unpaid rental or expenses are to be deducted from the security deposit it will be returned to the tenant. Tenant shall not have the right to apply the security deposit as payment for rent. Landlord has posted a surety bond with the Clerk of the Circuit Court of Dade County, Florida, to insure the proper handling of the security deposit; and accordingly, the landlord will comingle the security deposit with its other funds. Landlord will pay 5% per annum simple interest on any securty deposit held longer than 6 months, which interest shall be paid or credited to tenant at least once annually.

4. REPAIRS AND MAINTENANCE. Tenant has inspected the premises and personal property and, by taking possession, accepts same in the condition they are now in, "as is", and agrees they are suitable for the use intended. Landlord will make repairs to the interior and exterior of the building not caused by tenant's acts or omissions upon receipt of written notice from the tenant of any defective condition.

5. TENANT'S CARE OF PREMISES. Tenant shall at all times during the term of this lease (1) comply with all obligations imposed on tenant by applicable provisions of the building, housing and health codes; (2) keep the premises clean and sanitary including the removal of waste and garbage; (3) not destroy, damage, impair, misuse, waste, or remove any part of the premises or any property or facilities belonging to the landlord or other tenants; (4) refrain from doing anything which will in any way increase the fire risk or fire insurance premiums on the premises or any part thereof; and (5) conduct himself, and require all other persons on the premises with his consent to conduct themselves in a manner that does not disturb his neighbors, constitute a breach of the peace, or violate any law.

6. ASSIGNMENT AND SUBLETTING. Tenant shall not assign or sublease any or all of the premises or permit the same to be used or occupied by others without the prior written consent of the landlord. Any consent by the landlord to any assignment or sublease shall apply only to the specific transaction thereby authorized.

7. DESTRUCTION OF OR DAMAGE TO THE PREMISES. If the premises are damaged or destroyed other than by the wrongful or negligent act or omission of the tenant, so that the enjoyment of the premises is substantially impaired, this lease shall be terminated and the rent pro-rated as of the date of the damage or destruction.

8. PERSONAL PROPERTY OF TENANT. If the premises, or any part thereof, are damaged by reason of the installation or removal of tenant's property, tenant agrees to repair the damages at its own expense. Landlord is not responsible for any damage to tenant's property except damage caused by the negligent acts or omissions of landlord. Landlord shall have the right to store or otherwise dispose of any property remaining on the premises after termination of this lease or upon abandonment or vacating by tenant. Any such property left on or about the premises shall be considered

landlord's property and the title shall be conclusively presumed as having vested in landlord in disposing of said property. Landlord shall have the right to sell same at public or private sale. Tenant releases all claim to said property.

9. ALTERATIONS. The tenant shall not make any alterations to the premises or personalty of landlord without the prior written consent of landlord, and any completed alterations consented to are subject to final approval by the landlord. All alterations shall become the property of the landlord upon installation and shall be surrendered at the termination of this lease. The landlord shall have the right to remove all alternations in violation of this paragraph at any time and tenant agrees to pay the cost of such removal. Tenant will not place any signs on the building or adjoining premises.

IT IS EXPRESSLY UNDERSTOOD THAT, IN ADDITION TO THE TERMS AND CONDITIONS ON THIS PAGE, THIS LEASE IS SUBJECT TO THE TERMS AND CONDITIONS OF LEASE STATED ON THE REVERSE SIDE HEREOF.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

LANDLORD: THE SENGRA CORPORATION

/s/ BETH G. MARTINEZ

BY: /s/ C. DAVID YOUNTS (SEAL)

(Its Duly Authorized Agent)

TENANT:

BY: /s/ C. DAVID YOUNTS (SEAL)

Exhibit "4"

SPEED LETTER

To CHRIS KARSTETER

From John Halley
Meadow Walk
PH. 821-1133

Subject Occupancy of your unit

Message CHRIS,

I have been advised by David Younts that they are covering rent on your duplex through May. Please advise me as soon as possible as to whether or not you plan on continuing occupancy after May 31. Please note, rent on the unit is $740.00 and security is 1100.00.

Date 5/7/86 Signed /s/ J. Halley

Exhibit "5"

MIAMI LAKES INN & COUNTRY CLUB

EMPLOYEE HANDBOOK

THE COMPANY RESERVES THE RIGHT TO MAKE EXCEPTIONS TO OR ALTER ANY POLICIES IF IT IS APPROPRIATE TO DO SO

[Copy of Handbook omitted from Appendix as not material to issues presented].

APPENDIX C

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA
CIVIL DIVISION

CASE NO. 86-3797 CC 23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN and COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

MOTION FOR SEVERANCE

ELIZABETH W. JOYCE
FLORIDA BAR #317489

COMES NOW, Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, by and through its undersigned attorney, and moves the Court for entry of an Order severing the Counterclaim and Crossclaim filed by Defendant, CHRIS KARSTETER, for separate trial to be conducted subsequent to trial currently set on the Plaintiff's Complaint for Removal of Tenant, and in support of its Motion, states as follows:

1. Plaintiff has previously filed herein a Complaint for Removal of Tenant for non-payment of rent from residential real property located in Dade County, Florida, namely, 15461 Durnford Drive, Miami Lakes, Florida.

2. Defendant, CHRIS KARSTETER, has now sought to interpose a Counterclaim and a Crossclaim for monetary

damages relating to the said Defendant's previous employment.

3. The subject matter of the Complaint is separate and distinct from the subject matter of the Counterclaim and Crossclaim.

4. The Court is required by Florida Statutes §83.59(2) *to advance this cause on the Court's calendar* as it pertains to the Plaintiff's Complaint for Removal of Tenant and an early trial date has now been set.

5. There is no requirement or necessity to advance the Counterclaim or the Crossclaim on the trial calendar and no prejudice will be caused in permitting the Counterclaim and Crossclaim, relating to previous employment, to proceed separately and in due course.

WHEREFORE, Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, respectfully moves the Court to enter an Order severing the Counterclaim and Crossclaim, relating to previous employment, filed by Defendant, CHRIS KARSTETER, for separate trial to be held subsequent to trial now set on the Plaintiff's Complaint for Removal of Tenant.

WISEHEART & JOYCE, P.A.
Attorneys for Plaintiff
2840 S.W. Third Avenue
Miami, Florida 33129

By: /s/ ELIZABETH W. JOYCE
Elizabeth W. Joyce

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Severance was hand-delivered to Steven A. Edelstein, Esquire, Ress, Gomez, Rosenberg, Howland & Mintz, P.A., Attorneys for Defendant, Chris Karsteter, 1700 Sans Souci Boulevard, North Miami, Florida 33181, and to Marianne A. Vos, Attorney-at-Law, Greenberg, Traurig, Askew, Hoffman, Lipoff, Rosen & Quentel, P.A., Attorneys for Defendant, Miami Lakes Inn, Athletic Club and Golf Resort, Inc., 1401 Brickell Avenue, Miami, Florida 33131, this 3rd day of July, 1986.

By: /s/ ELIZABETH W. JOYCE
Elizabeth W. Joyce

IN THE COUNTY COURT IN AND FOR
DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO; 86-3797 (CC 23)

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Plaintiffs,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Counterclaimant,

vs.

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Counterdefendants.

CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Crossclaimant,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation,

Crossdefendant.

RESPONSE TO MOTION FOR SEVERANCE
(Florida Bar No. 161578)

Defendant/Counterclaimant/Crossclaimant, CHRIS KARSTETER, by and through his undersigned counsel herewith files his Response to Plaintiff's Motion for Severance of the Counterclaim and Crossclaim filed herein and would state the following:

Both the Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, and the Co-Defendant, MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC. f/k/a MIAMI LAKES INN AND COUNTRY CLUB, have filed motions to sever the Counterclaim and Crossclaim filed by CHRIS KARSTETER from the primary eviction proceeding herein. Additionally, the said CHRIS KARSTETER has filed his Motion to Transfer the within proceeding to the Circuit Court based upon lack of subject matter jurisdiction. Florida Common Law would appear to support the granting of both motions.

The law in Florida appears to be clear that where a landlord files an action in county court for removal of tenant under a summary procedure, and the tenant files a counterclaim which exceeds the jurisdiction of the county court, the counterclaim should properly be severed and transferred to the circuit court, with jurisdiction retained by the county court to consider the action for removal of tenant. *State ex rel. Attias v. Blanton*, 195 So.2d 870 (Fla. 3d DCA 1967); *Davis v. Flato*, 210 So.2d 16 (Fla. 4th DCA 1968); *Flamingo Blueprint, Inc. v. Monumental Properties of Florida, Inc.*, 358 So.2d 86 (Fla. 3d DCA 1978).

As a consequence of the above the Defendant/Counterclaimant/Crossclaimant, CHRIS KARSTETER, would withdraw his opposition to the respective Motions to Sever filed by the Plaintiff/Counterdefendant, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, and the Co-Defendant/Crossdefendant, MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC. f/k/a MIAMI LAKES INN AND COUNTRY CLUB. Additionally, however, it would be requested that when this Court enters

its Order severing the Counterclaim and Crossclaim from the removal of tenant action, that such Counterclaim and Crossclaim be simultaneously transferred to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida as the Court having proper jurisdiction over such Counterclaim and Crossclaim.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was hand delivered to Elizabeth W. Joyce, Esq., Wisehard & Joyce, P.A., 2840 S.W. Third Avenue, Miami, Florida 33129; Marianne O. Vos, Esq., Greenberg, Traurig, et al., 1401 Brickell Avenue, Miami, Florida 33131 and to Susan Norton, Esq., Hogg, Allen, Ryce, et al., 121 Majorca, Coral Gables, Florida 33134 this 21st day of July, 1986.

RESS, GOMEZ, ROSENBERG,
HOWLAND & MINTZ, P.A.
Attorneys for Karsteter
1700 Sans Souci Boulevard
North Miami, Florida 33181
(305) 893-5506

By: /s/ STEVEN A. EDELSTEIN
STEVEN A. EDELSTEIN

[FILED JUL 9 1986]

IN THE COUNTY COURT IN
AND FOR DADE COUNTY, FLORIDA

CASE NO. 86-3797 CC

SECTION NO. 23

CIVIL DIVISION

MEMO OF DISPOSITION

DATE OF HEARING 7-9-86

TYPE OF HEARING Trial 10:00 15 min

MOTIONS

TYPE OF MOTION

D—Karsteters motion to transfer

COURT RULING ON MOTION:

Counterclaim—D
Crossclaim—D
Possession—D
Pl's motion to sever—G
Rent is $730

DISPOSITION

Do not sign order for 10 days & $1460 to be put in Registry in 10 days unless I get law to the contrary

/s/ L.A.S.

JUDGE

APPENDIX D

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 86-3797 CC 23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN and COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

REPLY TO AFFIRMATIVE DEFENSES

ELIZABETH W. JOYCE
FLORIDA BAR #317489

COMES NOW, Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, by and through its undersigned attorney, and as and for its Reply to the Affirmative Defenses filed by Defendant, CHRIS KARSTETER, states as follows:

1. With respect to the allegations contained in paragraph seven (7) of the said Affirmative Defenses, Plaintiff admits that Defendant, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation, is a wholly owned subsidiary of Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, but Plaintiff otherwise denies the allegations contained in the said paragraph and demands strict proof thereof.

2. With respect to the allegations contained in paragraph eight (8) of the said Affirmative Defenses, Plaintiff would show that the letter of August 20, 1986, attached to the said Affirmative Defenses as "Exhibit 1", containing the terms and conditions of employment OF Defendant, CHRIS KARSTETER, by Co-Defendant, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., speaks for itself, and Plaintiff otherwise denies the allegations contained in the said paragraph and demands strict proof thereof.

3. With respect to the allegations contained in paragraph nine (9) of the said Affirmative Defenses, Plaintiff denies same and demands strict proof thereof.

4. Further replying to the allegations contained in paragraph nine (9) of the said Affirmative Defenses, Plaintiff would show that Plaintiff leased the demised premises to Defendant, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., for the benefit of Defendant, CHRIS KARSTETER, while Defendant, CHRIS KARSTETER, was in the employment of Defendant, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC.; moreover, after the termination of the employment of Defendant, CHRIS KARSTETER, neither Defendant paid rent under the said Lease Agreement and Plaintiff brought this action to terminate the lease and to regain possession of the premises.

5. With respect to the allegations contained in paragraph ten (10) of the said Affirmative Defenses, Plaintiff denies same and demands strict proof thereof.

6. Further replying to the allegations contained in paragraph ten (10) of the said Affirmative Defenses, Plaintiff would show that Section 83.57 of the Florida Statutes governs tenancies without specific duration and is not at all applicable to termination of a tenancy under by a written Lease Agreement for non-payment of rent.

7. With respect to the allegations contained in paragraph eleven (11) of the said Affirmative Defenses,

Plaintiff denies same and demands strict proof thereof; further replying, Plaintiff would show that the said statute specifically states that same is not applicable to terminations of tenancy "for cause", such as non-payment of rent.

8. With respect to the allegations contained in paragraph twelve (12) of the said Affirmative Defenses, Plaintiff denies same and demands strict proof thereof; further replying the naked allegation that the landlord has acted "in bad faith" does not constitute a defense or a counterclaim to an action for removal of tenant for non-payment of rent, and accordingly, should be stricken as improperly pled.

9. With respect to the allegations contained in paragraphs thirteen (13) and fourteen (14) of the said Affirmative Defenses, Plaintiff denies same and demands strict proof thereof.

10. With respect to the allegations contained in paragraph fifteen (15) of the said Affirmative Defenses, Plaintiff denies same and demands strict proof thereof; further replying, Plaintiff would show that the alleged termination of Defendant, Chris Karsteter's employment by Co-Defendant, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., "for reasons not included within . . . the employee handbook", does not constitute a defense to the present action for removal of tenant for non-payment of rent, and should be stricken as improperly pled.

11. With respect to the allegations contained in paragraph sixteen (16) of the said Affirmative Defenses, Plaintiff denies same and further replying, Plaintiff would show that any legal expenses incurred by Defendant, CHRIS KARSTETER, were voluntarily incurred after the termination of the employment of the said Defendant and after lawful termination of the tenancy of the said Defendant, and are not the responsibility of the Plaintiff.

WHEREFORE, having fully replied to the Affirmative Defenses filed by Defendant, CHRIS KARSTETER, Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, prays that the Court will enter Judgment in accordance with Plaintiff's Complaint for Removal of Tenant with all costs, including reasonable attorney's fees, assessed against Defendant, CHRIS KARSTETER, for the reasons aforesaid.

WISEHEART & JOYCE, P.A.
Attorneys for Plaintiff
2840 S.W. Third Avenue
Miami, Florida 33129

By: /s/ ELIZABETH W. JOYCE
Elizabeth W. Joyce

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply to Affirmative Defenses was hand-delivered to Steven A. Edelstein, Esquire, Ress, Gomez, Rosenberg, Howland & Mintz, P.A., Attorneys for Defendant, Chris Karsteter, 1700 Sans Souci Boulevard, North Miami, Florida 33181, and to Marianne A. Vos, Attorney-at-Law, Greenberg, Traurig, Askew, Hoffman, Lipoff, Rosen & Quentel, P.A., Attorneys for Defendant, Miami Lakes Inn, Athletic Club and Golf Resort, Inc., 1401 Brickell Avenue, Miami, Florida 33131, this 3rd day of July, 1986.

By: /s/ ELIZABETH W. JOYCE
Elizabeth W. Joyce

APPENDIX E

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA
CIVIL DIVISION

CASE NO. 86-3797 CC 23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN and COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

REPLY TO COUNTERCLAIM, AFFIRMATIVE DEFENSES TO COUNTERCLAIM, AND MOTION TO DISMISS COUNTERCLAIM

ELIZABETH W. JOYCE
FLORIDA BAR #317489

COMES NOW, Plaintiff/Counter-defendant, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, by and through its undersigned attorney, and as and for its Reply to the Counterclaim filed by Defendant/Counter-plaintiff, CHRIS KARSTETER, would show the Court as follows:

1. Plaintiff/Counter-defendant states that it is without knowledge concerning the allegations contained in paragraph one (1) of the said Counterclaim, and accordingly, denies same and demands strict proof thereof.

2. Plaintiff/Counter-defendant admits the allegations contained in paragraph two (2) of the said Counterclaim.

3. Plaintiff/Counter-defendant denies the allegations contained in paragraph three (3) of the said Counterclaim, and demands strict proof thereof.

4. With respect to the allegations contained in paragraph four (4) of the said Counterclaim, Plaintiff/Counter-defendant admits that Defendant, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., is a wholly owned subsidiary of Plaintiff/Counter-defendant and that the said Defendant was the employer of Defendant, CHRIS KARSTETER, until the termination of his employment in the month of April, 1986, and Plaintiff/Counter-defendant otherwise denies the allegations contained in the said paragraph and demands strict proof thereof.

5. With respect to the allegations contained in the unnumbered paragraph below the heading "Count I—Breach of Contract", Plaintiff/Counter-defendant realleges and reavers its responses to the allegations contained in paragraphs one (1) through four (4) of the said Counterclaim.

6. With respect to the allegations contained in paragraph five (5) of the said Counterclaim, Plaintiff/Counter-defendant states that the letter of August 20, 1984, containing the terms and conditions of the employment of Defendant, CHRIS KARSTETER, speaks for itself, and Plaintiff otherwise denies the allegations contained in the said paragraph and demands strict proof thereof.

7. With respect to the allegations contained in paragraph six (6) of the said Counterclaim, Plaintiff/Counter-defendant denies same and demands strict proof thereof.

8. With respect to the allegations contained in paragraphs seven (7) and eight (8) of the said Counterclaim, Plaintiff/Counter-defendant denies same and demands strict proof thereof.

9. With respect to the allegations contained in paragraph nine (9) of the said Counterclaim, Plaintiff/-

Counter-defendant states that it is without knowledge concerning the arrangements made by the said Defendant with his counsel, and states that any alleged obligation to pay attorney's fees was voluntarily assumed and is not the responsibility of the Plaintiff/Counter-defendant, and Plaintiff/Counter-defendant otherwise denies the allegations contained in the said paragraph and demands strict proof thereof.

10. With respect to the un-numbered paragraph below the heading "Count II—Punitive Damages", Plaintiff/ Counter-defendant realleges and reavers each and every response to the allegations contained in paragraphs one (1) through nine (9) of the said Counterclaim, as set forth above.

11. With respect to the allegations contained in paragraphs ten (10) and eleven (11) of the said Counterclaim, Plaintiff/Counter-defendant denies same and demands strict proof thereof.

12. With respect to the un-numbered paragraph below the heading "Count III—Declaratory Judgment", Plaintiff/ Counter-defendant realleges and reavers each and every response to the allegations contained in paragraphs one (1) through nine (9) of the said Counterclaim, as set forth above.

13. With respect to the allegations contained in paragraph twelve (12) of the said Counterclaim, Plaintiff/ Counter-defendant denies same and demands strict proof thereof.

14. With respect to the allegations contained in paragraph thirteen (13) of the said Counterclaim, Plaintiff/ Counter-defendant admits that it has taken the position that is a separate legal entity from its wholly owned subsidiary, Defendant, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., denies that it has as yet taken a position with respect to the existence of any contract extant between Defendant, MIAMI LAKES INN, and Defendant/ Counter-plaintiff, CHRIS KARSTETER, and further

replying, would show that Plaintiff/Counter-defendant is without knowledge of the terms and conditions of the previous employment of Defendant, CHRIS KARSTETER, and accordingly, denies the other allegations contained in the said paragraph and demands strict proof thereof.

15. Plaintiff/Counter-defendant is without knowledge concerning the allegations contained in paragraph fourteen (14) of the said Counterclaim, and accordingly, denies same and demands strict proof thereof.

16. With respect to the allegations contained in paragraph fifteen (15) of the said Counterclaim, Plaintiff/ Counter-defendant denies same and demands strict proof thereof.

17. With respect to the allegations contained in paragraph sixteen (16) of the said Counterclaim, Plaintiff/ Counter-defendant denies same and demands strict proof thereof.

AFFIRMATIVE DEFENSES TO COUNTERCLAIM

18. For a first, separate and distinct Affirmative Defense, Plaintiff/Counter-defendant would show that Plaintiff/Counter-defendant is entitled to a set off in the amount of the rent for use and occupancy of the premises by Defendant, CHRIS KARSTETER, in the amount of $1,460.00, representing rent for the months of June, 1986 and July, 1986, and a set off for rent as it continues to accrue during the pendency of these proceedings at the rate of $730.00 per month.

WHEREFORE, having fully replied to the Counterclaim filed herein by Defendant/Counter-plaintiff, CHRIS KARSTETER, Plaintiff/Counter-defendant, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, prays that same be dismissed with all costs, including reasonable attorneys's fees assessed against the said Defendant/Counter-plaintiff.

MOTION TO DISMISS COUNTERCLAIM

COMES NOW, Plaintiff/Counter-defendant, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, by and through its undersigned attorney, and moves the Court to enter its Order dismissing the Counterclaim filed by Defendant/Counter-plaintiff, CHRIS KARSTETER, and in support of its Motion, would show the Court as follows:

1. The gravamen of the Counterclaim filed herein by Defendant/Counter-plaintiff, CHRIS KARSTETER, is that the said Defendant/Counter-plaintiff's employment was improperly terminated by his former employer, co-Defendant, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC.

2. Plaintiff/Counter-defendant, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, is not and was not the employer of Defendant, CHRIS KARSTETER; Plaintiff/Counter-defendant is simply the landlord and owner of the premises which it leased to Defendant/Employer, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT INC., for the benefit of Defendant/former employee, CHRIS KARSTETER, while the said individual was employed.

3. Plaintiff/Counter-defendant, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, is a Florida corporation having a separate legal entity from its subsidiary, Defendant, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., and Plaintiff/Counter-defendant is not responsible for the employment or the termination of the employment of the Defendant/Counter-plaintiff.

WHEREFORE, Plaintiff/Counter-defendant, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, prays that the Court will enter its Order dismissing the said Counterclaim for the

reasons aforesaid, with all costs, including reasonable attorney's fees, assessed against the Defendant, CHRIS KARSTETER.

WISEHEART & JOYCE, P.A.
Attorneys for Plaintiff/
Counter-defendant
THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION
2840 S.W. Third Avenue
Miami, Florida 33129

By: /s/ ELIZABETH W. JOYCE
Elizabeth W. Joyce

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply to Counterclaim, Affirmative Defenses to Counterclaim, and Motion to Dismiss Counterclaim was hand-delivered to Steven A. Edelstein, Esquire, Ress, Gomez, Rosenberg, Howland & Mintz, P.A., Attorneys for Defendant, Chris Karsteter, 1700 Sans Souci Boulevard, North Miami, Florida 33181, and to Marianne A. Vos, Attorney-at-Law, Greenberg, Traurig, Askew, Hoffman, Lipoff, Rosen & Quentel, P.A., Attorneys for Defendant, Miami Lakes Inn, Athletic Club and Golf Resort, Inc., 1401 Brickell Avenue, Miami, Florida 33131, this 3rd day of July, 1986.

By: /s/ ELIZABETH W. JOYCE
Elizabeth W. Joyce

APPENDIX F

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 86-3797 CC23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN and COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

NOTICE OF DEMAND OF PAYMENT OF RENT PENDENTE LIFE INTO REGISTRY OF COURT

ELIZABETH W. JOYCE
FLORIDA BAR #317489

TO: STEVEN A. EDELSTEIN, ESQUIRE
Rees, Gomez, Rosenberg, Howland & Mintz, P.A.
Attorneys for Defendant,
Chris Karsteter
1700 Sans Souci Boulevard
North Miami, Florida 33181

MARIANNE A. VOSS
Attorney-at-Law
Greenberg, Traurig, Askew, Hoffman, Lipoff, Rosen & Quentel, P.A.
Attorneys for Defendant,
Miami Lakes Inn, Athletic Club and Golf Resort, Inc.
1401 Brickell Avenue
Miami, Florida 33131

NOTICE IS HEREBY given that Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, hereby demands that Defendants, CHRIS KARSTETER, pay forthwith into the Registry of the Court rent which accrued on June 1, 1986 in the amount of $730.00 and rent in the amount of $730.00 which became due on July 1, 1986, and that all future installments of rent which become due during the pendency of these proceedings be paid immediately into the Registry of the Court as such installments become due.

In the event that said Defendant fails to make immediate payments of the aforesaid amounts into the Registry of the Court, Plaintiff will apply to the Court for an Order striking the said Defendant's pleadings and entering an immediate Default Judgment for possession of the premises described in the Plaintiff's Complaint for Removal of Tenant and for Court costs and attorney's fees, if applicable, in accordance with Florida Statutes §83.60(2).

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Demand of Payment of Rent Pendente Lite into Registry of Court was hand-delivered to the above addressees this 3rd day of July, 1986.

WISEHEART & JOYCE, P.A.
Attorneys for Plaintiff
2840 S.W. Third Avenue
Miami, Florida 33129

By: /s/ Elizabeth W. Joyce
Elizabeth W. Joyce

APPENDIX G

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 86-3797 CC23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION,
a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN and COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

PLAINTIFF'S MOTION TO STRIKE ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT, CHRIS KARSTETER, AND FOR ENTRY OF DEFAULT PURSUANT TO FLORIDA STATUTES §83.60(2)

ELIZABETH W. JOYCE
FLORIDA BAR #317489

COMES NOW, Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, by and through its undersigned attorney, and moves the Court to enter an Order Striking the Answer and Affirmative Defenses of Defendant, CHRIS KARSTETER, and granting Default against the said Defendant and as grounds therefore states as follows:

1. Plaintiff has filed herein a Complaint for possession of a dwelling unit based upon non-payment of rent.

2. The said Defendant has sought to interpose a defense other than payment, which defense is contained in Paragraphs 1-16 of the said Defendant's Answer and Affirmative Defenses and consists of an alleged relationship between Plaintiff and Defendant, MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., alleged contract for employment and housing on an annual basis; and alleged improper termination of employment.

3. The said Defendant has failed to pay into the registry of the Court the accrued rent as alleged in the Plaintiff's Complaint or as determined by this Court and has failed to pay into the registry of this Court the rent accruing during the pendency of these proceedings.

4. The failure of the said Defendant to pay rent into the registry of the Court as specified above in timely fashion constitutes an absolute waiver of the said Defendant's defenses under Florida Statutes, §83.60(2), and the Plaintiff is entitled to immediate default as provided therein.

WHEREFORE, Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, prays that the Court will enter an Order Striking the Answer and Affirmative Defenses of Defendant, CHRIS KARSTETER, and granting Default in this cause and will award Judgment for possession of the premises to the Plaintiff together with costs in this action and all other relief requested in the Plaintiff's Complaint.

WISEHEART & JOYCE, P.A.
Attorneys for Plaintiff
2840 S.W. Third Avenue
Miami, Florida 33129

By: /s/ Elizabeth W. Joyce
Elizabeth W. Joyce

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiff's Motion to Strike Answer and Affirmative Defenses of Defendant, Chris Karsteter, and for Entry of Default Pursuant to Florida Statutes §83.60(2) was hand-delivered to Steven A. Edelstein, Esquire, Ress, Gomez, Rosenberg, Howland & Mintz, P.A., Attorneys for Defendant, Chris Karsteter, 1700 Sans Souci Boulevard, North Miami, Florida 33181, and to Marianne A. Vos, Attorney-at-Law, Greenberg, Traurig, Askew, Hoffman, Lipoff, Rosen & Quentel, P.A., Attorneys for Defendant, Miami Lakes Inn, Athletic Club and Golf Resort, Inc., 1401 Brickell Avenue, Miami, Florida 33131, this 3rd day of July, 1986.

/s/ Elizabeth W. Joyce

Elizabeth W. Joyce

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 86-3797 CC23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN and COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

NOTICE OF TRIAL

ELIZABETH W. JOYCE
FLORIDA BAR #317489

TO: STEVEN A. EDELSTEIN, ESQUIRE
Rees, Gomez, Rosenberg, Howland & Mintz, P.A.
Attorneys for Defendant,
Chris Karsteter
1700 Sans Souci Boulevard
North Miami, Florida 33181

MARIANNE A. VOSS
Attorney-at-Law
Greenberg, Traurig, Askew, Hoffman, Lipoff, Rosen & Quentel, P.A.
Attorneys for Defendant,
Miami Lakes Inn, Athletic Club and Golf Resort, Inc.
1401 Brickell Avenue
Miami, Florida 33131

Notice is hereby given that the above cause has been set down for trial before the Honorable Leah Simms, Judge of the above Court, in her Chambers at the Dade County Courthouse, 17011 N.E. 19th Avenue, North Miami Beach, Florida, in Room 26, at 10:00 A.M., on Wednesday, the 9th day of July, 1986.

I hereby certify that a true and correct copy of the foregoing Notice of Trial was hand-delivered to the above addresses on this 3rd day of July, 1986.

WISEHEART & JOYCE, P.A.
Attorneys for Plaintiff
2840 S.W. Third Avenue
Miami, Florida 33129

By: /s/ Elizabeth W. Joyce
Elizabeth W. Joyce

APPENDIX H

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 86-3797 CC23

Florida Bar No. 161578

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Counterclaimant,

vs.

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Counterdefendant.

CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Crossclaimant,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC. f/k/a MIAMI LAKES INN AND COUNTRY COUB, a Florida corporation,

Crossdefendant.

RESPONSE TO NOTICE OF DEMAND OF PAYMENT OF RENT PENDENTE LITE INTO REGISTRY OF COURT AND PLAINTIFF'S MOTION TO STRIKE ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT, CHRIS KARSTETER, AND FOR ENTRY OF DEFAULT PURSUANT TO FLORIDA STATUTES §83.60(2)

In response to Plaintiff's Notice of Demand of Payment of Rent Pendente Lite into Registry of Court and Plaintiff's Motion to Strike Answer and Affirmative Defenses of Defendant, Chris Karsteter, and for Entry of Default Pursuant to Florida Statutes §83.60(2), Defendant/Counterclaimant/Crossclaimant, CHRIS KARSTETTER, challenges the constitutionality of §83.60(2) *Fla. Stat.* as violative of the rights guaranteed by Article I, §§ 9 and 21 of the Florida Constitution, and as violative of the rights guaranteed by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed to Elizabeth W. Joyce, Esq., Wisehard and Joyce, P.A., 2840 S.W. Third Avenue, Miami, Florida 33129 and to Marianne O. Vos, Esq., Greenberg, Traurig, Askew, et al., 1401 Brickell Avenue, Miami, Florida this 9th day of July, 1986.

RESS, GOMEZ, ROSENBERG, HOWLAND & MINTZ, P.A.
Attorneys for Karsteter
1700 Sans Souci Boulevard
North Miami, Florida
(305) 893-5506

By: /s/ STEVEN A. EDELSTEIN
Steven A. Edelstein

APPENDIX I

IN THE COUNTY COURT IN AND
FOR DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO: 86-3797 (CC23)

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION,
a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

CHRIS KARSTETER AND ALL OTHRS IN POSSESSION,

Counterclaimant,

vs.

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION,
a Florida corporation,

Counterdefendant.

CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Crossclaimant,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation,

MEMORANDUM OF LAW IN SUPPORT OF RESPONSE TO NOTICE OF DEMAND FOR PAYMENT OF RENT PENDENTE LITE INTO REGISTRY OF COURT AND FOR ENTRY OF DEFAULT PURSUANT TO FLORIDA STATUTE §83.60(2)
(Florida Bar No. 161578)

Defendant/Counterclaimant/Crossclaimant, CHRIS KARSTETER, by and through his undersigned attorneys herewith submits his Memorandum of Law in Support of his Response to Plaintiff's Demand for Payment of Rent into the Registry of the Court and for Entry of Default Pursuant to §83.60 *Fla. Stat.* and would state the following:

FACTUAL BACKGROUND

CHRIS KARSTETER [herinafter "KARSTETER"] was originally employed by MIAMI LAKES INN AND COUNTRY CLUB, the predecessor to the Defendant/Crossdefendant, MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC. [hereinafter "MIAMI LAKES INN"]. At the time he was hired KARSTETER was provided with a letter agreement that provided for his employment on an annual basis by David Younts, President of MIAMI LAKES INN. The letter agreement specifically provided that KARSTETER would receive rent free housing as well as various other benefits. A copy of the letter agreement was attached as Exhibit "B" to the Answer, Counterclaim and Crossclaim filed by KARSTETER herein.

At all times material to the issues presented herein, MIAMI LAKES INN was a wholly owned subsidiary of THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION [hereinafter "THE GRAHAM COMPANIES"]. Throughout his employment KARSTETER was paid his salary by THE GRAHAM COMPANIES, he was issued credit cards by THE GRAHAM COMPANIES and insurance benefits were also paid for by THE GRAHAM

COMPANIES. In all respects, although the letter agreement was signed by MIAMI LAKES INN, it appears that KARSTETER was actually employed by THE GRAHAM COMPANIES. As a consequence, KARSTETER has sought to pierce the corporate veil on the basis that THE GRAHAM COMPANIES had actually employed him and the contract for his employment was ratified, accepted, approved, assumed by or assigned to THE GRAHAM COMPANIES, which accepted full responsibility for compliance with same. Additionally, there was a lease agreement that was entered into between THE GRAHAM COMPANIES and its wholly owned subsidiary, MIAMI LAKES INN, which provided for an apartment through September 30, 1986, to be occupied by KARSTETER. KARSTETER's name appears on the lease agreement, and he occupied the apartment in question from October 1, 1985 through the present date, despite the fact that he never paid any rent for the apartment which was provided for his use rent free.

THE GRAHAM COMPANIES has taken the position that KARSTETER should deposit into the Registry of the Court the amount of rent specified in the lease agreement, despite the fact that KARSTETER never paid any rent whatsoever for his occupancy of the apartment in question, and that the agreement was entered into between THE GRAHAM COMPANIES, and its wholly owned subsidiary, MIAMI LAKES INN. KARSTETER has taken the position that the apartment was provided for him on a rent free basis, and as a consequence no rent should be required to be deposited into the Court Registry; and secondarily that §83.60(2) *Fla. Stat.*, which provides for the deposit of rent into the Court Registry, is unconstitutional as a denial of access to the courts.

ARGUMENT

Section 83.60(2) *Fla. Stat.* specifically provides that:

> In an action by the landlord for possession of a dwelling unit based upon non-payment of rent, if a tenant interposes any defense other than payment, the defendant shall pay into the Registry of the Court the accrued rent as alleged in the complaint or as determined by the court and the rent which accrues during the pendency of the proceeding, when due. Failure of the tenant to pay the rent into the Registry of the Court as provided herein constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default.

In the within cause KARSTETER has taken the position that there is no rent due from him for reason that he has a contract which provided rent free housing through September 30, 1986. Simultaneously, the Plaintiff has taken the position that $730.00 per month rent is due under the terms of a lease agreement entered into with the MIAMI LAKES INN. As a consequence, there is a genuine issue of material fact as to whether the rent that is due is $730.00 a month or zero dollars a month. It would respectfully be suggested that until there is a final determination of the total amount of rent due per month, KARSTETER cannot be compelled pursuant to the cited statutory authority to deposit an amount of rent into the Court Registry which he has not previously agreed to.

Additionally, as indicated in the Affirmative Defenses raised by KARSTETER, and in the response to Plaintiff's various motions, KARSTETER has challenged the constitutionality of §83.60(2) *Fla. Stat.* as being a denial of access to the court systems.

Article I, Section 21 *Florida Constitution* expressly provides that:

> *Access to Courts.* — The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

It is generally recognized that any restrictions on access to the courts must be liberally construed *in favor of the constitutional right. Lehmann v. Cloniger,* 294 So.2d 344 (Fla. 1st DCA 1974). In *Kluger v. White,* 281 So.2d 1 (Fla. 1973) the Supreme Court emphasized that:

> Where a right of access to the courts for redress of a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida or where such right has become a part of the common law of the State pursuant to Fla. Stat. §2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown. 281 So.2d at 4.

The creation of §83.60(2), *Fla. Stat.,* in 1973 was subsequent to the establishment of the Declaration of Rights of the Constitution of the State of Florida, and as such is subject to the tests set forth in *Kluger v. White.* The challenged statute, §83.60(2) *Fla. Stat.,* provides that a party is deprived of presenting any defense to a cause of action brought for removal of tenant unless he first deposits money into the Court Registry, and that failure to deposit such funds would result in the entry of an immediate default. Clearly the requirement that monies be deposited into the Court Registry creates a constitutional impairment which should invalidate the provisions of §83.60 *Fla. Stat.,* since no alternative method of raising defenses is provided for.

It should further be noted that due process under the United States Constitution requires that there be an opportunity for every party to present every available defense to litigation. *American Surety Co. v. Baldwin,* 287 U.S. 156,

168, 53 S.Ct. 98, 77 L.Ed. 231 (1932). Obviously, the provisions of §83.60(2) *Fla. Stat.* presents a severe impediment to access to the courts which is violative of the right to due process established by the United States Constitution and as set forth in *American Surety Co. v. Baldwin, supra.*

It should be noted that when previously presented with this question, the courts of Florida have held that §83.60(2) *Fla. Stat.* is un-constitutional as a denial of access to the courts. To this extent copies of the following decisions are attached hereto:

1. *Jones v. Styles,* 46 Fla. Supp. 175 (1977) wherein the County Court, Palm Beach County, Florida stated that:

> Since any restrictions on access to the courts must be liberally construed in favor of the constitutional right, *Lehmann v. Cloniger,* 294 So.2d 344, 347 (Fla. 1st DCA, 1974), it is this court's opinion that §83.60(2) is also violative of the Florida constitutional guarantee of free access to the courts. 46 Fla. Supp. at 178.

2. *Cogen v. Corey,* Dade County Court Case Number 83-0003 (CC 23), Eleventh Judicial Circuit Court Case Number 83-17496 (CA) (1983). Dade County Court Judge A. Leo Adderley entered an Order stating specifically that:

> CONSIDERED, ORDERED and ADJUDGED:
>
> 1. The Plaintiffs' Motion to Strike Defendant's Pleadings is hereby denied based upon Defendant's constitutional challenge to §83.60(2), Florida Statues.
>
> 2. That §83.60(2), Fla. Stat. is unconstitutional as applied to indigent defendants:
>
> a. As violative of rights guaranteed by Article I, §§9 and 21 of the Florida Constitution.

b. As violative of rights guaranteed by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

DONE and ORDERED in Chambers, North Miami Beach, Dade County, Florida this 10th day of June 1983.

It must be emphasized that there should be no discriminatory distinction between indigents and other persons. In the within cause of action, KARSTETER was employed by the Plaintiff and Co-defendant who paid his salary through the end of May, 1986, the effective date of his termination. His wife was similarly terminated as of the same date. Neither Karsteter nor his wife has been employed since their termination and they are presently seeking employment elsewhere. As a consequence, it would respectfully be shown that the provisions of §83.60(2) *Fla. Stat.* are unconstitutional in that they would deny KARSTETER the right to assert his Affirmative Defenses and to proceed with the prosecution of his Counterclaim and Crossclaim herein. Further it must be recognize that if there is an entry of any default as against KARSTETER, such default would of necessity, create a res judicata situation relative to his Counterclaim which is intimately connected with the initial Complaint filed by the Plaintiff herein, and cannot properly be separated from same.

It is respectfully requested that this Court deny Plaintiff's demand that KARSTETER be required to deposit the sums requested into the Court Registry, and further that this Court hold §83.60(2) *Fla. Stat.* unconstitutional as a denial of access to the courts.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed to Elizabeth W. Joyce, Esq., Wisehard & Joyce P.A., 2840 S.W. Third Avenue, Miami, Florida 33129; Marianne O. Vos, Esq., Greenberg, Traurig,

et al., 1401 Brickell Avenue, Miami, Florida 33131 and to Susan Norton, Esq., Hogg, Allen, Ryce, et al., 121 Majorca, Coral Gables, Florida this 21st day of July, 1986.

RESS, GOMEZ, ROSENBERG, HOWLAND & MINTZ, P.A.
Attorneys for Karsteter
1700 Sanc Souci Boulevard
North Miami, Florida 33181
(305) 893-5506

By: /s/ STEVEN A. EDELSTEIN
Steven A. Edelstein

IN THE COUNTY COURT IN AND
FOR DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 83-0003 CC23
CIRCUIT COURT NO. 83-17496 CA

MAX V. COGEN and PETER M. COGEN,
d/b/a 183RD STREET APTS.,

Plaintiffs,

vs.

BRENDA COREY,

Defendant.

ORDER ON PLAINTIFFS' MOTION TO STRIKE DEFENDANT'S PLEADINGS

THIS CAUSE having come on for hearing on the 14th day of April, 1983, and this Court, after hearing argument of counsel, reviewing the parties Memoranda of Law, and otherwise being fully advised in the premises, does hereby enter the following order:

CONSIDERED, ORDERED and ADJUDGED:

1. The Plaintiffs' Motion to Strike Defendant's Pleadings is hereby denied based upon Defendant's constitutional challenge to §83.60(2), Florida Statutes.

2. That §83.60(2), Florida Statutes is unconstitutional as applied to indigent defendants:

a. As violative of the rights guaranteed by Article I, §§9 and 21 of the Florida Constitution.

b. As violative of the rights guaranteed by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

DONE and ORDERED in Chambers, North Miami Beach, Dade County, Florida this 10th day of June 1983.

/s/ A. LEO ADDERLY
ACTING CIRCUIT COURT JUDGE

Copies furnished to:

Paultte Ettachild, Esq.
Richard Aschenbrenner, Esq.
Janet Reno, Esq.
Jim Smith, Esq.

CHP2/R1

JONES v. STYLES.

No. 77-1644-CC-13.

County Court, Palm Beach County.

October 27, 1977.

Section 83.60(2) of the Florida Residential Landlord and Tenant Act provides that in an action by a landlord for possession of premises based on non-payment of rent if the tenant interposes any defense other than payment he shall pay the accrued rent as alleged in the complaint into the court registry and the rent which accrues during the pendency of the proceeding, when due, and that upon his failure to do so "the landlord is entitled to an immediate default."

Attacking the constitutionality of the statute, the defendant filed a motion for leave to file her affirmative defenses without payment into the court registry. She denied the amount of rent claimed and that the landlord had given the proper notice required to terminate the tenancy.

The county court, Cohen, J., granted the motion, ordered the case to proceed to trial without payment into the court registry.

The statute violated the due process clause of the Fourteenth Amendment, fundamental to the notion of due process is that there be an opportunity to present every available defense. The statute also violated §21 of Article 1 of the state constitution which provides that "the courts shall be open to every person for redress of any injury . . ." Any restriction on access to the courts must be liberally construed in favor of the constitutional right.

Joseph Tomberg, Boynton Beach, for the plaintiff.

Stephen Press, Florida Rural Legal Services, Delray Beach, for the defendant.

HAROLD J. COHEN, County Court Judge.

This cause came on for hearing before the court upon defendant's motion to allow her to file her affirmative defenses without payment into the registry of the court. Defendant made an alternative motion to allow the answer to stand, again without payment into the court, even if the affirmative defenses are stricken. A third alternative motion was made by the defendant to determine the amount that must be paid into the court. For reasons more fully set out below the court will not make ruling on defendant's third alternative motion.

The plaintiff, G. E. Jones, originally brought this action for possession of the apartment in which the defendant Lucile Styles resides as a week to week tenant.

The action was brought pursuant to Florida Statute §83.40, et seq., the "Florida Residential Landlord and Tenant Act." An answer was timely filed by the defendant in which she denied several allegations in the complaint and asserted two affirmative defenses.

Because defendant did not deposit the amount of rent alleged to be due with her answer, the court notified defendant's attorney by telephone on October 12, 1977 that she must pay the rent due into the court or a default would be entered.

APPENDIX J

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 86-3797 CC23

ELIZABETH W. JONES
FLORIDA BAR #317489

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC. a/k/a MIAMI LAKES INN AND COUNTRY CLUB, CHRIS KARSTETER, AND ALL OTHERS IN POSSESSION,

Defendants.

PLAINTIFF'S REPLY TO DEFENDANT, CHRIS KARSTETER'S RESPONSE TO PLAINTIFF'S NOTICE OF DEMAND OF PAYMENT OF RENT PENDENTE LITE INTO REGISTRY OF COURT AND PLAINTIFF'S MOTION TO STRIKE ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT, CHRIS KARSTETER, AND FOR ENTRY OF DEFAULT PURSUANT TO FLORIDA STATUTES §83.60(2)

COMES NOW, Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, by and through its undersigned counsel, and as and for its Reply to Defendant, CHRIS KARSTETER's Reponse to Plaintiff's Notice of Demand of Payment of Rent Pendente Lite into Registry of Court and Plaintiff's Motion to Strike Answer and Affirmative Defenses of Defendant, CHRIS KARSTETER, and for Entry of Default pursuant to Florida Statutes §83.60(2), Plaintiff would show the Court as follows:

1. The Defendant/Counter-plaintiff/Cross-plaintiff, CHRIS KARSTETER, has purported to challenge the constitutionality of Florida Statues §83.60(2) as violative of the rights guaranteed by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

2. Legislation requiring tenants to pay rent into Court during possessory action has been specifically upheld as non-violative of either State or Federal constitutional guarantees. *Farrell v. Drew,* 19 NY2d 486; 281 NYS2d 1, 227 NE2d 824 (1967); *Department of Building v. Saltzer,* 16 NY2d 915, 264 NYS2d 701, 212 NE2d 154 (1965); *Ten West 28th Street Realty Corp. v. Moerdler,* 52 Misc 2d 109, 275 NYS2d 144 (1966); *Milchman v. Rivera,* 39 Misc 2d 347, 240 NYS2d 859, *app dismd* 13 NY2d 1123, 247 NYS2d 122, 196 NE2d 555 (1963); *Schaeffer v. Montes,* 37 Misc 2d 722, 233 NYS2d 444 (1962); *Emray Realty Corp. v. De Stefano,* 5 Misc 2d 352, 160 NYS2d 433 (1957); *De Paul v. Kauffman,* 441 Pa 386, 272 A2d 500, 40 ALR3d 810 (1971). *See* Annot. 40 ALR3d 821. *See, also,* Schoshinski, *American Way of Landlord and Tenant* (1980) p. 168.

3. The county Courts in Dade County and in all other counties in the States of Florida have repeatedly applied Florida Statutes §83.60(2), requiring deposits of rent into the Court Registry during pending possessory actions. *Debra v. Dunton* 4 Fla. Supp. 2d 75 (1983).

4. Appellate Courts in Florida have also upheld and applied Florida Statutes §83.60(2) requiring payment of rent into the Court Registry in pending possessory actions. *K.D. Lewis Enterprises Corp. v. Smith* 445 So.2d 1032 (Fla. App. 5 Dist. 1984).

5. The United States Supreme Court has upheld the constitutionality of an Oregon Statute requiring deposits of rent in the Court Registry in pending possessory actions, *Lindsey v. Normet* 405 U.S. 56 (1972).

WHEREFORE, Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, having fully replied to Defendant CHRIS KARSTETER's response to Plaintiff's Notice of Demand of Payment of Rent Pendente Lite into Registry of Court and Plaintiff's Motion to Strike Answer and Affirmative Defenses of Defendant, CHRIS KARSTETER, and for entry of Default pursuant to Florida Statutes §83.60(2), Plaintiff prays that the said Motion be granted, for the reasons aforesaid.

WISEHEART & JOYCE, P.A.
Attorneys for Plaintiff
2840 S.W. Third Avenue
Miami, Florida 33129

By: /s/ Elizabeth W. Joyce
Elizabeth W. Joyce

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiff's Reply to Defendant, Chris Karsteter's Response to Plaintiff's Notice of Demand of Payment of Rent Pendente Lite into Registry of Court and Plaintiff's Motion to Strike Answer and Affirmative Defenses of Defendant, Chris Karsteter, and for Entry of Default Pursuant to Florida Statutes §83.60(2) was mailed to Steven A. Edelstein, Esquire, Ress, Gomez, Rosenberg, Howland and Mintz, P.A., Attorneys for Defendant, Chris Karsteter, 1700 Sans Souci Boulevard, North Miami, Florida 33181, and to Marianne O. Vos, Attorney-at-Law, Greenberg, Traurig, Askew, Hoffman, Lipoff, Rosen & Quentel, P.A., Attorneys for Defendant, Miami Lakes Inn, Athletic Club and Golf Resort, Inc., 1401 Brickell Avenue, Miami, Florida 33131, this 16th day of July, 1986.

/s/ Elizabeth W. Joyce

Elizabeth W. Joyce

APPENDIX K

IN THE COUNTY COURT IN AND FOR
DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO: 86-37 97 CC 23

THE GRAHAM COMPANIES, f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Plaintiff

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER and ALL OTHERS IN POSSESSION,

Defendants.

CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Counterclaimant

vs.

THE GRAHAM COMPANIES,
f/k/a THE SENGRA CORPORATION,

Counterdefendant.

CHIRS KARSTETER AND ALL OTHERS IN POSSESSION,

Crossclaimant,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation.

Crossdefendant.

Transcript of proceedings had before The Honorable MATTIE BELLE DAVIS, County Court Judge, 17011 Northeast 19th Avenue North Miami Beach, Florida on July 22, 1986, taken before JAN WILLITZ, Court Reporter and Notary Public in and for the State of Florida at Large.

APPEARANCES:

WISEHEART & JOYCE
BY: ELIZABETH W. JOYCE,
Attorney at Law.
On behalf of the Graham Companies

RESS, GOMEZ, ROSENBERG, HOWLAND & MINTZ, P.A.
BY: STEVEN A. EDELSTEIN, ESQ. and ROLAND GOMEZ, ESQ.
On behalf of Defendant Karsteter

GREENBERG, TRAURIG, ASKEW, HOFFMAN, LIPOFF, ROSEN & QUENTEL, P.A.
BY: MARIANNE A. VOS,
Attorney at Law
On behalf of Miami Lakes Inn, Athletic Club and Golf Resort, Inc.

ALSO PRESENT:

Wallace L. Lewis, Jr., Esq.
Elizabeth Graham Martinez
John Halley
Susan Norton, Attorney at Law
Robert Burlington, Esq.

(Thereupon the following proceedings were had in chambers:)

THE COURT: Would you all please state your appearances for the record?

MS. JOYCE: My name is Elizabeth W. Joyce of Wiseheart and Joyce for the Plaintiff, the Graham Companies.

MS. VOS: My name is Marianne A Vos, and I am with Greenberg, Traurig, and we represent the Defendants, Miami Lakes Inn.

MR. EDELSTEIN: My name is Steven A. Edelstein, and this is Roland Gomez. We are with Ress, Gomez, Rosenberg, Howland & Mintz, and we represent the Defendant, Chris Karsteter.

MS. JOYCE: Your Honor this is an action for removal of tenants for non-payment of rent from a duplex apartment.

Our client is the Graham Companies, the owners of the duplex, and the Defendant Miami Lakes Inn, is a subsidiary corporation of the Graham Companies, and it leased this duplex apartment from our client, and it uses that apartment to house its employees.

Miami Lakes Inn right now has a former employee who is in possession whose name is Chris Karsteter, the other Defendant, and back in April, Miami Lakes Inn fired Chris Karsteter and said, "We will pay your rent for one more month. We will pay your rent through May but after May you have to move or make your own arrangements to pay."

In June Miami Lakes Inn, the tenant under the lease, didn't pay our client the rent and neither did Chris Karsteter and we served a three-day notice for non-payment of rent, and they didn't make any payments, and we brought this action to regain possession, and the Defendant, Miami Lakes Inn, filed an Answer admitting all of the allegations and stipulated to judgment.

They had no use for the apartment anymore, and they didn't have that employee anymore, but the Defendant,

Chris Karsteter, filed an Answer and a Counterclaim and a Crossclaim which exceeds the jurisdictional amount of County Court, and we filed—or the Plaintiff filed a Motion for Severance to have the Crossclaim and Counterclaim transferred up to Circuit Court, and to suggest that the County Court retain jurisdiction of the eviction.

We also filed a Motion for Default pursuant to 83.760, subparagraph 2, the Plaintiff's Rent Deposit Statute, and on July 9, Your Honor, these two motions; that is our Motion to Sever and Crossclaim and Counterclaim and our Motion for Default because they haven't put the money in the registry Both of these on July 9 were heard in front of Judge Leah Simms. She ruled on these motions, and here is the transcript.

This, I will submit, Your Honor, is the law in the case now and—

THE COURT: Well, the—

MS. JOYCE: Counsel, here is a copy.

THE COURT: This motion that was made on July 9 is in the file.

MS. JOYCE: Fine, Your Honor.

THE COURT: As you know, I am substituting for Judge Simms. She gave birth to a baby boy and will be out for a while and it appears from this Memorandum that the Motion to Transfer as to the Counterclaim—Judge Simms has written a D, which indicates she denied it.

As to the Crossclaim she wrote a D which indicates she denied it. As to the possession, she wrote D which indicates she denied that, and I presume that that is the Motion to Transfer based on the Motion to Transfer as to possession on the Plaintiff's Motion to Sever and she wrote G which indicates she granted it.

She required the Defendant to put $1,460 in the registry in ten days and Defendant Karsteter did file a Memorandum of Law in support of Response to the Notice of Demand for Payment of Rent, but declined to put money in the registry of the Court.

MS. JOYCE: With respect to the Motion for Severance, I believe that that has been resolved by the other things that the Defendant Chris Karsteter filed which was a Response to our Motion to Sever in which they have withdrawn their opposition to our Motion for Severance, and I believe that that has been filed right there.

I have another copy of it.

MR. EDELSTEIN: So the Court is aware, we researched the law and found out that it was proper under the case law to sever our Counterclaim and Crossclaim which exceeds the Court's jurisdiction, and so we withdraw our opposition to that.

However, we did find out that the case law which Counsel advised us at the last hearing also provides that when that severance is done that the measures which exceed the Court's jurisdiction should be transferred to the Circuit Court and we have filed a Response indicating that that should have been the procedure followed by the Court, that their Motion to Sever be granted and our Motion to Transfer the severed items should also be granted.

MS. JOYCE: I have both a copy of his Response withdrawing his opposition, and it is hard to find in the Court file. Here is an extra copy which indicates his withdrawal.

THE COURT: I have it before me.

MS. JOYCE: Thank you.

I have a Proposed Order, Your Honor, which grants the motion—or I have a—

THE COURT: First, let us get to the $1,460.

MS. JOYCE: Fine. We will set aside the Motion for Severance for the moment.

With respect to the motion for putting the money in the registry, Your Honor, the transcript of the hearing—and I appreciate your informing us as to what the docket sheet reads and the transcript of those proceedings indicates just as the docket sheet does that on our motion requiring them to put $1,460 in the registry—the Judge said that she wanted that money in the registry, or she wanted them to submit some mighty convincing case law to show why they shouldn't have to, and on pages 9, 10, and 11, the Court's ruling on that says just what I said.

It says that they have to put the money in the registry within ten days or present some mighty convincing case law.

On pages 9, 10, and 11 of the transcript, Your Honor, what they have submitted is simply not convincing. They are trying to show that our rent and the Florida Rent Deposit Statute is not constitutional.

They have relied though on a case called Jones versus Stiles, which is a case that simply has not been followed.

It is a County Court case that frankly misquotes and misstates a United States Supreme Court case of Lindsay versus Normet, and the Lindsay case did not hold, and the Oregon Rent Deposit is the statute which is unconstitutional and what it did is hold unconstitutional the amount of a supersedeas bond prior in connection with an appeal but it did state in evictions that the Court didn't require a tenant to put the money in the registry, and that that might be an unconstitutional taking of the landlord's property. So the United States Supreme Court

in Lindsay versus Normet—and I have a copy of that case right here, Your Honor—the United States Supreme Court has come down in favor of the Rent Deposit Statute.

Again, another point that they rely on, or another case is Kogan versus Corey. That is a case that Judge Adderley heard a few years ago, and frankly, he doesn't follow it anymore. It says that in the final judgment attached to their Memorandum, the Court referred to the Rent Deposit Statute as unconstitutional as it applied to the indigent, but here, Your Honor, Chris Karsteter certainly is not indigent. He was paid $37,500 per year for the past two years by our client and was paid $10,000 in severance pay, and I understand in April that he was fired, so I really don't know where Kogan versus Corey helps them.

If I can sum up the argument really briefly, the third point they raised was denial of access to the Court in their argument before, and I am sure, as you know, before 1973, a tenant couldn't even raise any defenses other than payment to an eviction action, but in '73, Chapter 83 was enacted, and the statute said that now tenants could raise defenses other than payment, but in order to protect the landlord, the tenant had to put the money in the registry.

Now their payment into the registry was just essentially showing of good faith.

It is just a temporary relinquishment of the money, and I think the Florida Courts have held that limited and reasonable restrictions may be placed on the right of access to the Courts.

In support, Your Honor, I think that here Judge Simms has already ruled that they had to put the $1,460 in the registry.

THE COURT: We will leave it conditional.

MS. JOYCE: Yes, that is the law, and the case, just real briefly, she gave him the same ten days to submit

that case law, and respectfully, we just don't think that that is mighty convincing, particularly in light of the presumption of constitutionality, and I really don't think that they have overcome that.

THE COURT: On July 15, Mr. Edelstein and Mr. Gomez appeared before the Court in a Motion to Compel. They did state that Elizabeth Joyce had appeared but had left, and when they heard that the Judge wouldn't be here—Judge Simms—and at that time, I suggested that all pending motions be set for today and all parties be notified, and it would appear that they were adament in following through on that. So I will hear from you, Mr. Edelstein, as to why you haven't contributed the $1,460.

MR. EDELSTEIN: First of all, that was raised in the prior hearing before Judge Simms. There is a genuine issue of material fact as to whether or not there are any amounts of rent due at all.

We have alleged in affirmative defenses and attached to our pleadings and also raised in our counterclaim and crossclaim a contract that existed between our client, Mr. Karsteter and Miami Lakes Inn, and that contract provides that he would receive rent-free housing with no payment.

The position of the Graham Companies is that our client, because they entered into a friendly agreement with their wholly-owned subsidiary Miami Lakes Inn, they entered into this agreement, which is attached to the Complaint, and it says that they made a transfer on paper of these amounts.

Our client says, "I never paid anything for one and a half years, and that the term is until September 30 of their agreement," so they say we are reading two agreements together, two documents, to determine the length of time and our position is that we have already

paid into the registry the amount that is called for under our agreement which is zero.

If we are required to pay zero into the registry, that is how much we have paid, and if there is a genuine issue of material fact that has to be determined by this case since there is a demand for a jury trial that the jury must decide whether or not the amount owed that is required by the statute is zero dollars or $730 a month.

That is issue number one. I don't think the Court can compel us to pay an amount until there has been a judicial determination as to how much the amount involved is.

The statute only requires us to deposit the rent due, and if the rent due is zero, then that is how much we should pay, and I think until that issue has been resolved, I don't think that they can require us to pay that amount.

Secondly, the constitutional issue we feel that that is very viable. The case which was cited, the U.S. Supreme Court case, which was based upon an Oregon statute, Oregon law, and we are dealing here with the Florida Constitution, a provision which requires free access to the Courts.

No Court as yet has considered this other than the County Court in this case. The two cases which Counsel has cited the Jones versus Stiles and copies of these have been attached to our Memorandum and held that the statute in question, 83.60 was unconstitutional, and it says since any restrictions on access to the Courts may be liberally construed in favor of the constitutional right, and that is the only thing that the Court cites, the Lehman versus Klonninger case.

It is the Court's opinion that Section 83.60(2) is also violative, and the Florida Constitution guarantees free access to the Courts.

It doesn't cite the U.S. Supreme Court decision because the U.S. Supreme Court decision involved an Oregon statute and it says the Florida Constitutional guarantee is violated by this statute, and that was a decision rendered in Palm Beach County Court back in 1977.

The other case that has considered the issue of the constitutionality of the statute is Kogan versus Corey, also cited in our Memorandum, in which Judge Adderley in this particular division of the County Court sitting here in North Miami Beach held that Section 83.60 is unconstitutional as it applied to an indigent Defendant, and violated the rights guaranteed by Article 1-9 and Section 1 of the Florida Statutes, and again, Florida law, not Federal law, also held that it violated the due process of the equal protection laws of the U.S. Constitution.

Now we are here talking about two County Court decisions.

In the Reply Memorandum which we received yesterday from the Graham Companies, they cite a bunch of New York cases which I don't think are applicable.

I think even County Court decisions in Florida take precedence over decisions rendered in New York interpreting Florida law.

They have also cited—or they have indicated to the County Courts in Dade County and all other counties of the states which have repeatedly applied in statute and they cite to apply a sub-decision of Debra versus Dunton, which never once mentioned the constitutional issue merely just applied the statute, and that is a decision rendered by the County Court in Orange County, and they cite to a 5th District Court of Appeals decision which applies the statute, but never once raises the issue of constitutionality, and they cite—

THE COURT: Do you have a copy of that?

MR. EDELSTEIN: They are Court decisions and I have copies of all those decisions.

THE COURT: Do you have a copy of the decision Lewis versus Smith?

MR. EDELSTEIN: Lewis versus Smith? Here is a copy of it, Judge, and the Court will note that there is no mention at all in that decision of constitutional issues.

The Court merely applies the statute to a particular fact pattern, and I don't think that any time that a Court renders an opinion, applying the statute when it doesn't address a constitutional issue, that there is a determination of the constitutionality.

The issue just was never raised or brought before the Court for examination.

I will give Your Honor a moment to read through that.

THE COURT: The Lewis case is at 445 So.2d series, and the Court held that: We have concluded that the trial judge was correct in issuing the Writs of Possession upon the refusal to deposit rent that was required by the statute and by so holding, we do not mean to imply that by failing to deposit a rent, a tenant's cause of action was lost to him.

He loses only the right to retain possession of the premises if he fails to pay the rent to the landlord or into the registry of the Court.

Any cause of action against the landlord to which he may be otherwise entitled to is still available to him.

The Court holds that that is still the ruling and that the Defendant should pay into the registry of the Court $1,460.

At this time, the Court will extend the ten days up through tomorrow.

It is in view of the fact that Judge Simms was not here, and Counsel did appear on July 15th, and no action was taken at that time.

MR. EDELSTEIN: Your Honor, if you will—

THE COURT: If the Defendant doesn't choose to put money into the registry of the Court, he will lose possession, but he may still proceed with this cause under the Counterclaim and Crossclaim and his Answers to Affirmative Defenses.

MR. EDELSTEIN: Well, Your Honor—

MS. JOYCE: Your Honor—

MR. EDELSTEIN: If I may just for a moment—the statute cited provides that in the event that we failed to place the money into the Court registry, then all of our defenses are in effect stricken and a default is entered, if I understand the Court's ruling correctly.

THE COURT: That's correct.

MR. EDELSTEIN: Granting a Writ of Possession, the Court would in effect be striking our defenses and entering a Writ of Possession at that time—

MS. JOYCE: Your Honor, can I respond?

MR. EDELSTEIN: —by default, and I presume that that is what the court is saying.

THE COURT: I did, and I should not have stated it that way because I do not know that the statute provides for the entry of a default.

MS. JOYCE: We will make our witness available as we have done today, and in the event that the Court wants to enter judgment, these people are here to testify and we will make them available at any other time Your Honor.

THE COURT: Well, I think the first thing to be decided is whether or not you are going to put the money in the Court registry, and if you are going to put the money into the Court registry, we can have an early hearing on the possession and as to the Counterclaim and Crossclaim, we can proceed in due course.

MS. JOYCE: Shall I prepare an Order?

THE COURT: Let's go off the record a second.

(Discussion off the record.)

MR. EDELSTEIN: Your Honor, in all candor, Mr. Karsteter, as far as I am aware, has no intention of placing any money into the Court registry.

He was fired from his job.

Despite the Plaintiff's contention as to what he was paid for anything else, he has been out of work since he was terminated. His wife was terminated simultaneously, and they have both been out of work.

They have been seeking employment elsewhere, and as far as my discussions with him, he is not planning on placing any money into the Court registry in compliance with the statute.

That is part of the reason for our challenge, that he has raised numerous defenses to the claim that Plaintiff has presented, and our argument that this is a denial of access to the Courts is that if the Court does apply the statute and strikes our defenses and enters a default, then we would be precluded from presenting those, even though it is his position that these are viable defenses.

THE COURT: He may present his Counterclaim and Crossclaim for damages.

MR. EDELSTEIN: Well, those would have to be transferred to the Circuit Court.

MS. JOYCE: Which we are doing by this Order.

THE COURT: I don't know why Judge Simms denied the transfer to the Circuit Court on those.

MS. JOYCE: She gave us the impression that she would consider and grant that part of the answer if we severed it, and since the Counterclaim and Crossclaim exceeds the jurisdictional amount of County Court, I think that it was given, and I think that it is possible that it was just a typographical error that was clerical.

THE COURT: She wrote D.

MS. JOYCE: It is kind of confusing. We all understand and agree that the Counterclaim and Crossclaim exceeds the jurisdictional amount of County Court.

THE COURT: And, there is also a—

MR. EDELSTEIN: Judge, Judge—

THE COURT: —declaratory—

MS. JOYCE: Counsel has agreed that they be severed and we will agree that they be.

MR. EDELSTEIN: In all candor, my understanding of Judge Simms' Order was that she was giving us the same ten-day period of time within which to file a Memorandum of Law setting forth why the matters should not be severed, and it was my understanding that she was going to sever the matter in the event we did not provide any law to the contrary.

We had originally opposed severance upon completing research, and we determined that the correct law in the State of Florida is that the severance is proper and their motion should be granted, and we have withdrawn our opposition to that, but supplementally we pointed out in our Memorandum filed with the Court that the severed

portion, i.e., the Counterclaim and the Crossclaim, should be transferred to the Circuit Court, and I realize that it is merely a technical end, that the procedures followed in Dade County will still come back to you for determination, but there is a lack of jurisdiction, I believe, which prompts our original motion to transfer the entire cause of action to Circuit Court. I think that that is what Judge Simms may have ruled.

We have moved to transfer the entire matter—

MS. JOYCE: That's right.

MR. EDELSTEIN: —to Circuit Court, and she declined to do that, holding that the County Court had jurisdiction, exclusive jurisdiction over the landlord/tenant matter and the action for eviction, but she would rule later as to whether or not she would sever the Counterclaim and Crossclaim and transfer those. So that the problems will be—

MS. JOYCE: Here is what happened—

THE COURT: Is Mr. Karsteter here today?

MR. EDELSTEIN: No, Judge, he is out of the state.

MS. JOYCE: Judge, I have a Proposed Order on the motions that they have pretty much agreed to, but the severing of the Complaint for eviction, I have provided Counsel with a copy here.

THE COURT: Somewhere in this file I saw some comment that there had been no service of the Crossclaim on—

MR. GOMEZ: Miami Lakes.

THE COURT: Miami Lakes Inn.

Miami Lakes Inn has filed pleadings, so I would assume that they have—

MR. EDELSTEIN: They have been served by just being already before the Court properly, and I don't believe that the Court has—

THE COURT: I don't assume that their responses would indicate that they have been awaiting service.

MR. GOMEZ: They are the same company.

MS. JOYCE: We have Counsel for—

MS. VOS: That is the case statute which clearly provides that they have entered into issues in this thing, and we have made no representations or pleadings opposed to their issue.

We have only moved to strike and sever all of the Crossclaim issues, and there has not been service.

MS. JOYCE: Counsel, if it is severed, you wouldn't have any problem with raising—

THE COURT: Miami Lakes Inn filed a Motion to Dismiss the Crossclaim.

MS. VOS: That's correct.

MR. EDELSTEIN: By going through affirmative relief, I think that they waive any objections.

THE COURT: That is waiving service of process.

MR. EDELSTEIN: I think the case law is replete on that, Judge, that any time a party seeks any type of affirmative action on the part of the Court, that they have waived service of process, and they filed an appearance here and by filing an appearance, you can serve their attorney-of-record since they are already before the jurisdiction of the Court.

The only purpose for requiring service of process is to bring them within the Court's jurisdiction, and once they have been admitted to the Court's jurisdiction as they have in the Plaintiff's portion of the case, I don't

think that they can challenge the jurisdictional aspect of service of process.

THE COURT: I don't think so either.

MR. EDELSTEIN: Judge, there is one other aspect that the Court should be aware of.

We have alleged throughout this that the Plaintiff, the Graham Companies, and the Defendant Miami Lakes Inn are one and the same entity.

Mr. Karsteter's deposition has been taken and the treasurer of the Graham Companies has been taken, and Mr. Karsteter—even the treasurer of the Graham Companies admitted, not only of the Graham Companies, but also of Miami Lakes Inn—Mr. Karsteter was paid his salary by the Graham Companies and not by Miami Lakes Inn. So we haved alleged that there is in effect a conspiracy, and we have other allegations there, but that is part of our reason for challenging that requirement that monies be deposited is that Mr. Karsteter's agreement for employment was with the Graham Companies, and there again, the amount involved should be zero.

MS. JOYCE: Your Honor, we think that these two, the Graham Companies and Miami Lakes Inn are corporations, and we have stipulated that Miami Lakes Inn is a corporation that is a wholly-owned subsidiary of the Graham Companies, and there is nothing wrong with the parent suing a subsidiary. It happens all the time.

There was a bona fide lease agreement between the Graham Companies and Miami Lakes Inn. There was an actual lease. There was an actual default, and we extended the courtesy to Mr. Karsteter and allowed him the opportunity to pay up and to stay on there in possession even though he had been discharged, but, Your Honor, with respect to the issue of severance—and I appreciate Counsel's candor in informing the Court about

his understanding of Judge Simms' ruling—and we would—or I have submitted a Proposed Order there which would sever the Counterclaim and Crossclaim from the Complaint for removal of the tenant, and permitted employee removal of the tenant to proceed—to be set for jury trial on the next calendar.

THE COURT: Well, it is his contention that he was entitled to remain on the premises until September 30, 1986?

MR. GOMEZ: Yes.

MS. JOYCE: Your Honor, here is what I think is so perplexing, and again I just want to let the Court know what we know on this, and that is that Chris Karsteter was employed by the Miami Lakes Inn.

He didn't have a contract for a term of any years. The only document relating to his employment was a letter of August 20th saying: Congratulations, and here are the terms of your employment, and one of the terms of employment is that Miami Lakes Inn will provide housing.

Now the conclusion from that is that as part of the terms of employment Miami Lakes was to provide housing, and the correlation of that would be if he is not employed, they would not provide housing.

Now the lease agreement which Your Honor was just looking at is between our client, the Graham Companies, and Miami Lakes Inn.

THE COURT: Well, it states here the Sengra Corporation.

MR. EDELSTEIN: That was the predecessor, and it was subsequently changed to the Graham Companies and Miami Lakes Inn, and Chris Karsteter, frankly, Judge, wasn't a party to this case, except you could say he was

a third-party beneficiary because the Graham Companies leased the unit to Miami Lakes Inn, so that Miami Lakes Inn could house its employees during or while they were employed.

THE COURT: His name appears here.

MR. EDELSTEIN: Yes, Judge, and furthermore, it is our position that the contract documents, the letter agreement, which the lease indicates not specifically a term, but the lease agreement that they are bringing the action on does specify a term and the term is until September 30th of this year. So it is our position that the terms of employment agreement, which provides for free housing, goes until September 30th of this year, and that is why we say that he is to get free rent, and it goes until September 30th.

There is no reason why he should have to pay rent into the registry when the amount involved is zero. He has paid zero into the registry.

THE COURT: The lease provides—

MR. EDELSTEIN: The statute—

THE COURT: —for the payment of the rent which is $730 a month.

MR. EDELSTEIN: Between one of the Defendants and Miami Lakes Inn, which is a wholly-owned subsidiary, but Mr. Karsteter's agreement says that he doesn't pay anything.

By depositions that have been taken, he also testified that the terms of the employment agreement extended for the period of that lease and also, as I said, we have determined that Miami Lakes Inn is a wholly-owned subsidiary of the Graham Companies.

Mr. Karsteter was employed supposedly by Miami Lakes Inn, but he was paid by the Graham Companies,

and his credit cards were provided by the Graham Companies and insurance benefits were provided by the Graham Companies and could have obviously been comingled in their financial accounts since they are paying from the Graham Companies the accounts, the employee, Mr. Karsteter, so they have assumed for his contract or the contracts have been assigned to them, so these are intimately involved, and it our position once again that the agreement which provide that he get housing for the term, and when you read it in conjunction with the lease agreement, he gets free housing to the end of the term of the lease which is September 30th.

MS. JOYCE: Your Honor, it is a very interesting position, but it just really doesn't make sense.

If an employee is given housing as part of his employment and he is fired, he doesn't get any more housing. It just so happens that there was a lease agreement between the landlord and its subsidiary. There was an actual lease that was in existence before this dispute arose. Your Honor, and so there are some similar people sitting on the same board.

MR. EDELSTEIN: Judge—

MS. JOYCE: Once again, Judge, I think that we have to go on the facts of the motion that you are considering—the motion entering the Order right now considering the Order granting the severance, and respectfully, with respect to the issue of the money in the registry—and I appreciate Mr. Edelstein's candor for informing the Court that Mr. Karsteter really has no intention of putting money into the registry after having heard the Court's ruling, and since we have that in mind, and since we have our witnesses here, possession witnesses who are here to testify as to the indebtedness amount, the service of the three-day notice and the non-payment after notice, respectfully, we think that it is—

in order for the Court to enter judgment for possession because they have failed to put the money into the registry, and Your Honor has ruled that the Court will give him until tomorrow to put the money into the registry, and even then setting up another hearing for us to come back to give our witnesses' testimony, and since Counsel has been so candid as to say, "Look, we are just telling you in advance that we are not going to comply," we think that it is appropriate for the Court then to go ahead and enter judgment for possession which allows us to prove up, as Counsel said, that their failure to put the money into the registry entitles us to an immediate default. We have our witness to prove that up, and all of the things which Your Honor has just heard, they are free to pursue in Circuit Court in their Counterclaim.

Their remedy, Judge, is damages or whatever the various counts in their Counterclaim is, which they can purview all of those, and it is just that he has possession.

THE COURT: In the midst of all of this, is there any change of settlement of this matter?

MR. EDELSTEIN: We have written them a letter, and we have not received a response.

MS. JOYCE: I have considered it. I delivered it to Counsel, but, Judge, we are far apart at this point.

THE COURT: Would you like to take five minutes and go outside and see if you can discuss settlement?

MS. JOYCE: All right, would Counsel tell the Court—

THE COURT: No, I don't want to hear about the settlement.

MS. JOYCE: No, Your Honor, we really are so far apart that it is just oceans in terms of the possessory

action issue on the business of the Counterclaim and Crossclaim which is going to be a long case which will be pending for a long time, I am sure.

MR. GOMEZ: That is what the settlement offer includes, everything.

MS. JOYCE: The one that was presented wasn't acceptable.

THE COURT: The Counterclaim and Crossclaim and everything?

MR. GOMEZ: Right.

MS. JOYCE: Yes, ma'am.

THE COURT: The statute does provide that if the money is not placed into the registry of the Court, then the Court may enter default, and thereupon proceed with the case for default judgment, final judgment of possession.

MS. JOYCE: Your Honor, with that in mind, I have a proposed judgment.

THE COURT: Is there any response to that?

MR. EDELSTEIN: Well, Judge, I was the one that already pointed out to the Court that that is what the agreement provided because I was confused by Your Honor's previous comment.

THE COURT: For which I apologize. I am familiar with the statute, but I was just giving you a chance—

MR. EDELSTEIN: Well, Judge, here again, part of our defenses raised which is that the amount involved that you are requiring to be deposited into the Court registry is an inaccurate amount; that the actual amount—and I think it requires a jury determination—is zero dollars, and now if the Court is going to apply the statute and strike that affirmative defense, then we are

going to be precluded and deprived of an opportunity to be heard by the Court.

THE COURT: That is what the statute provides.

MR. EDELSTEIN: I understand that, and that is why we are saying the statute is unconstitutional because it is going to take away our challenge even to the amount due, and if it turns out that if this matter was tried by a jury, and a jury came back and determined that the amount of monthly rent which we owed was zero, which is a genuine issue of material fact, then the statute is denying us access to the Courts and an opportunity to be heard.

THE COURT: $1,460 in the registry, in the Court registry, and a jury trial will be granted.

MS. JOYCE: They have a remedy. There is a remedy in Circuit Court for damages. He can sue for all of those things that he is talking about, and he has a remedy in damages, but he has to give the possession part before the Court decides that he doesn't have to pay any rent after we fired him, and they say they are not paying rent because of an immaterial lease agreement, which did provide for rent. I don't frankly see how their argument hangs together, but that is why we are here today.

He is able to pursue that in Circuit Court and his remedy is in Circuit Court, and respectfully, we think that we are out the possession.

MR. EDELSTEIN: Judge, it is more than that.

THE COURT: Is he still in possession? You said that he was out of the state.

MR. EDELSTEIN: He is out of the state looking for a job.

MR. GOMEZ: We hear that he is in South Carolina, the last I heard, interviewing for a job.

MR. EDELSTEIN: He came to the State of Florida, Judge, and he moved down here to accept this position. He originally was out of the state.

MR. GOMEZ: He was in Seattle, Washington, and they paid his expenses down here, and he was terminated after a year and a half.

THE COURT: You do not wish to give him the opportunity to make the deposit in Court tomorrow?

MR. EDELSTEIN: It is my understanding, Judge, that he has declined to do that. He has indicated previously, in depositions also, that he would not.

MR. GOMEZ: Can I talk to my associate for just a second?

THE COURT: You may go outside if you wish.

MR. GOMEZ: May we do that?

THE COURT: Sure.

(Brief recess.)

MR. GOMEZ: I feel nervous when somebody is out of town giving him this kind of advice over the phone.

THE COURT: We can take another break.

(Brief recess.)

MR. EDELSTEIN: Judge, we have discussed the matter, and here again, in all candor to the Court, there is going to be no payment into the registry.

THE COURT: Then if the Defendant takes that position, a default will entered against the Defendant for failure to make the deposit into the registry of the court pursuant to statute.

MS. JOYCE: Respectfully, Your Honor, I have one witness.

MR. EDELSTEIN: Your Honor—

MS. JOYCE: He will testify as to the indebtedness, the service of the three-day notice and the non-payment following the three-day notice, and his name is John Halley.

MR. GOMEZ: You have that by deposition.

MR. EDELSTEIN: We are not contesting that they served the three-day notice. There has been a default.

THE COURT: The witness is here, and instead of referring to the file and so forth, we will hear the testimony of the witness.

MR. EDELSTEIN: That is not necessary.

MR. JOYCE: I just have three questions of Mr. Halley.

THE COURT: Raise your right hand, sir.

(Thereupon, JOHN HALLEY was called as a witness by the Plaintiff, and having been first duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION

BY MS. JOYCE:

Q Please state your full name.

A John Wesley Halley.

Q And, by whom were you employed during April, May, and June of this year?

A The Graham Companies; manager of the Eagle Nest duplexes.

Q Mr. Halley, did there come a time when you were informed that Miami Lakes Inn had failed to pay the rent on the premises known as 15461 Durnford Drive?

MR. EDELSTEIN: I object. It calls for hearsay: Was he ever informed of this.

THE COURT: Sustained.

MR. JOYCE: Thank you, Counselor, I will rephrase the question. I'm sorry.

BY MS. JOYCE:

Q Mr. Halley, did anybody pay the rent for June, 1986?

A No.

Q Did you—

MR. GOMEZ: Please give him a chance—

MR. EDELSTEIN: Judge, I'm not sure that he has that information on his own.

It is my understanding that he doesn't have that information. He has acquired that from other people, and I would like to know what year.

MS. JOYCE: You can do that on cross.

THE COURT: You may voir dire him on that point.

MR. GOMEZ: May I, because I took his deposition.

MS. JOYCE: Should I finish the questioning?

MR. GOMEZ: I would like to voir dire on this.

Mr. Halley, I took your deposition previously, and do you remember when we met, as I recall, you understood that there may be some payment, wire transfers of payment of rent between Miami Lakes and the Graham Companies?

THE WITNESS: Yes.

MR. GOMEZ: You have never seen such a transfer?

THE WITNESS: As of June 2, in going to the accounting department, I was advised that the Miami Lakes Inn had not paid rent.

MR. GOMEZ: Did you ever see any paperwork indicating that there was any transfer of funds from the time Mr. Karsteter took possession of these premises almost two years ago?

THE WITNESS: I would see only the delinquent list provided by the accounting department, and as of June 2, no rent was paid on that unit.

MR. GOMEZ: Have you ever seen any documents that indicate the entire time Mr. Karsteter was occupying those premises that there was ever any transfer of funds from the Graham Companies to Miami Lakes Inn or Miami Lakes Inn to the Graham Companies?

Did you ever see such a document?

THE WITNESS: It would not come to my attention. It would be on the books as of June 2, and there was a May payment made to the Graham Companies.

MR. GOMEZ: For that entire time?

THE WITNESS: For June.

MR. GOMEZ: I am talking about the entire time he was in possession of the premises.

THE WITNESS: If they weren't delinquent, I would have no reason to see that information.

MR. GOMEZ: Would you answer the question with a yes or no?

Have you ever seen any paperwork indicating that there had been a payment, even on paper, between the Miami Lakes Inn and the Graham Companies during the entire 18 or 19 months that Mr. Karsteter—let me finish—

THE WITNESS: I wouldn't see that. I wouldn't see that.

MR. JOYCE: Your Honor, that is not relevant.

May I interject here? I don't think that it is relevant, the inquiry—was there a default in payment of money; was there a transfer of funds. That is for the Counterclaim.

MR. EDELSTEIN: Judge--

MR. GOMEZ: Wait a minute.

I have been advised that I was given the opportunity to voir dire, and I would appreciate that.

They filed a motion indicating that there was payment, or at least this man has no information as I know from his deposition, and there was never even a transfer between the Graham Companies and the Miami Lakes Inn during the entire 18, 19 months that Mr. Karsteter was in possession, and now they have contended that there wasn't a payment in one particular month when there has never been a payment.

That is the testimony of all of these witnesses that they have here, Your Honor, and for him to try to come in at this point, even with the default being entered, to try to give some hearsay testimony when he has never seen the first records, and there are no records of any payment, so we object to him being allowed to testify.

THE WITNESS: Correct.

I would receive a delinquent list if the money had not been transferred. As of June 2, the money was not—had not been transferred as it had been in prior months.

MR. GOMEZ: Have you seen the first document that there was any money ever transferred previously?

—

THE WITNESS: I usually saw no checks, but, no, it was not—that would not be my concern.

MR. GOMEZ: That is my point.

MR. EDELSTEIN: His own indication, Judge, would be that he was advised of this. He has no personal knowledge. He has not seen any books or records, and I don't think that he is competent to testify.

MS. JOYCE: Right, and if we could eliminate this, and let me inquire of Mr. Halley concerning the service of the three-day notice, when he did it, and he is the manager of the duplex, and we have here Beth Martinez, Beth Graham Martinez, who has seen all of the documents, and is familiar with the journal entries and the payments by Miami Lakes Inn to the Graham Companies, so I said that we have one witness, and could we have, real briefly, two witnesses?

THE COURT: Proceed with the witness.

BY MS. JOYCE:

Q Mr. Halley, did there come a time when you served a three-day notice on the premises at 15461 Durnford Drive?

A Yes, on June 2, 1986.

Q Did you serve the three-day notice?

A I served it personally to Mr. Karsteter's wife.

Q And, as manager of the Eagle Nest duplexes, did you receive any payment from Mr. Karsteter—

A No.

Q —within the three days?

A No.

Q Have you accepted any payments from Mr. Karsteter or anyone else since that time?

A No.

MS. JOYCE: I have no further questions of this witness with respect to service.

CROSS EXAMINATION

BY MR. GOMEZ:

Q Sir, did you serve any three-day notice on the Miami Lakes Inn, Athletic Club and Golf Resort, Inc. in accordance with the lease that has been attached to the Complaint?

A I served a notice in accordance with the lease which was to that residence.

Q If you served the document to Mr. Karsteter, were you fully aware that he had been terminated from any job that he had with the Graham Companies or any subsidiary?

A Yes.

Q So at the time you served the notice to him, you knew that you were not giving notice to Miami Lakes Inn, Athletic Club and Golf Resort, Inc.?

A I was serving notice in accordance with the lease, which it says that it would be served to that residence, and I was advised by the Miami Lakes Inn that they had terminated his employment a month earlier and that they wouldn't pay his rent through that month and that was effective as of June 1, and they were no longer living in the unit.

Q If you will notice, most of the questions call for a yes or no answer.

A I'm giving you all the answers.

Q By "all," if you have necessity to explain it, I am sure that the Judge would wish for you to explain it.

A Fine.

Q You have a fine attorney here who represents you.

A I'm telling you what I know.

Q Would you mind, if you know the answer to the question—

A I'll tell you what—

Q Since my question was a yes or no—

A I will answer them to the best of my ability.

Q Did you believe that Mr. Karsteter was going to notify the Miami Lakes Inn, Athletic Club and Golf Resort, Incorporated that he had received a notice directed to them when you served it on him?

A I advised Miami Lakes that a notice had been served on that unit verbally.

Q Did you ever deliver that three-day notice to the Miami Lakes Inn, Athletic Club and Golf Resort, Inc. at any time until today?

A That address is specified in the lease agreement.

MS. JOYCE: Your Honor, this line of questioning is irrelevant at this time because Miami Lakes Inn announced that it would not be paying the rent and Counsel for Miami Lakes is here, and they have filed an Answer admitting all of the allegations of the Complaint.

They do not contest this, and Defendant Karsteter was served the three-day notice giving him an opportunity to pay and stay on the premises, and a default had already occurred with Miami Lakes, and they announced that they weren't going to pay, and there is no reason to serve them a three-day notice.

The three-day notice was served on the premises to Karsteter giving them an opportunity to pay, and this line of questioning about what Mr.—

THE COURT: Well, you may proceed with your testimony and present your argument later.

MR. GOMEZ: Judge, I am not sure if that was an objection to the question I was asking.

THE COURT: An objection? It sounds like an argument.

MS. JOYCE: I just tried to stop him.

MR. GOMEZ: I thought that I was still doing cross examination. I was going to ask the Court for help.

THE COURT: I thought you had finished.

MR. GOMEZ: I may be about to give up.

THE COURT: Do you wish to further cross examine him?

MS. JOYCE: I believe Counsel is not referring to the source of the notice, and that is all that he is testifying to.

I just have one more witness, Judge.

THE COURT: Raise your right hand and be sworn.

(Thereupon, ELIZABETH GRAHAM MARTINEZ was called as a witness by the Plaintiff, and having been first duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION

BY MS. JOYCE:

Q Please state your full name.

A Elizabeth Graham Martinez.

Q And, what is your position?

A Vice President of Miami Lakes Properties.

Q Are you familiar with the rent—

THE COURT: Vice president of what?

THE WITNESS: Miami Lakes Properties.

BY MS. JOYCE:

Q As such, are you familiar with the books and records, recent records specifically, of the Eagle Nest duplex at 15461 Durnford Drive, Miami Lakes, Florida?

A Yes. In preparation of attending Court the last time—and I don't know what date it was—but we went into the accounting files and asked them to copy all of the journal entries which were made between the divisions of the companies in which it—

MR. GOMEZ: I think that calls for a yes or no answer.

I object to it. It is going to be hearsay evidence.

BY MS. JOYCE:

Q Let me ask it again.

I believe you said—

MR. GOMEZ: Yes, she is familiar.

BY MS. JOYCE:

Q Did there come a time when no payment was paid of rent for the premises at 15461 Durnford Drive?

MR. GOMEZ: I object because the best evidence would be the record, and she is talking about—

MS. JOYCE: She has looked at them, and she certainly can testify to them because—

MR. GOMEZ: Not from her testimony. She doesn't work for the Graham Companies, so she doesn't have control over those records, if we are talking about these records, then we would like to see them, and that is the best evidence, and we object to her testifying on hearsay.

THE COURT: The objection is sustained, and if she has copies, and I believe she stated—

THE WITNESS: I brought them with me last time, and I don't have them with me.

BY MS. JOYCE:

Q You have them right there.

A Not the journal entries, which is what they are asking for specifically.

MS. JOYCE: We can supply those, but I think that Ms. Martinez does have them.

THE COURT: Do you have any questions?

I don't think that it is time to argue what you want to argue now, and you can do that at the end of the case. This is in the middle of the testimony.

Do you have any additional questions to ask of her?

MS. JOYCE: Yes.

BY MS. JOYCE:

Q Have the Graham Companies accepted any rent on these premises since the service of the three-day notice?

MR. GOMEZ: I object on two grounds; one, leading. She doesn't work for the Graham Companies; she works for Miami Lakes Properties from what she said in her deposition, and she is not in a position to give that testimony.

THE COURT: There was a motion for a hearing on—

MR. GOMEZ: She wanted the trial, Judge.

MR. EDELSTEIN: They want a trial.

MS. JOYCE: Just a minute. We have a treasurer, but just one moment. If I could have just one moment with Counsel—

THE COURT: You may. It would be my suggestion since this was set for a hearing on motions, that the trial

be set for another time and the Plaintiff be prepared with whatever records that are available.

MS. JOYCE: Your Honor, I have one suggestion, a line of inquiry which is really brief, and I think that Ms. Martinez—

MR. GOMEZ: Are we not going to have the trial or are we going to have a trial?

MS. JOYCE: We are having a trial now.

MR. GOMEZ: I thought the Judge said that we are setting it for another time.

THE COURT: That was my suggestion.

MS. JOYCE: Would Your Honor prefer to do that?

I think that that it is true too that the Graham Companies as a corporation can designate whomever it wants to be its representative, and as such, Ms. Martinez has personal knowledge as to whether the rent was paid or not.

THE COURT: She is just testifying as a Vice President of Miami Lakes Properties—

MS. JOYCE: Then, Your Honor, could we do this—

THE COURT: —to my recollection.

MS. JOYCE: Could we take you up on your suggestion and set it for trial, and as to testimony, we will bring the treasurer, and he will be able to testify and show the best evidence of the journal entries.

MR. GOMEZ: We have some other motions, Judge.

MS. JOYCE: Right, and Beth Martinez is the—

THE COURT: The trial will be recessed then for another date.

What other motions do you have?

MS. JOYCE: I think that that takes care of it for now.

We have Motions to Compel, but really they relate to the Crossclaim.

THE COURT: What motions do you have?

MR. EDELSTEIN: Well, Judge, there are a bunch of other motions.

First of all, since the Court has indicated that it is entering a default against Chris Karsteter, we had prepared a motion, and it is really not listed on today's calendar, but we would ask the Court to consider it on an emergency basis.

It is a motion basically to stay proceedings because, based upon the default that has been entered, we wish to take an appeal from that ruling, and we would ask the Court to stay the proceedings in order to allow us an opportunity in order to have an appellate review of the issue concerning whether or not we are required to deposit those funds in the Court registry.

MS. JOYCE: Your Honor, I have not had an opportunity to review this motion, and I am seeing it as you are for the very first time.

MR. GOMEZ: You just lost.

MR. EDELSTEIN: You just lost, exactly.

MS. JOYCE: And, I think that Counsel, in order to stay proceedings, had to post a supersedeas bond.

MR. EDELSTEIN: Judge, here again—

MS. JOYCE: I need a moment to review the motion.

MR. EDELSTEIN: The amount of the supersedeas normally is an amount of the judgment, or the Court may set such a bond if it so desires, but in this case, it is our position once again that the amount involved is zero, and

if that is the case, then there should not necessarily have to be a supersedeas bond.

THE COURT: Judge Simms has already determined that the amount was $1,460 as of the date of July 9th.

MR. GOMEZ: That would be right.

MR. EDELSTEIN: That's correct.

MS. JOYCE: It seems to me that this is premature. We haven't even proved up our evidence in the events, so they need to post a supersedeas, or at least it is customary, for twice the amount of rent that is owed, plus something to protect the land for damages.

They are asking for an appeal and—

MR. GOMEZ: Do you think that it is premature in trying to move this to get this expeditiously heard?

THE COURT: I will dispose of the motion now before the Court, and the Court has announced the entry of a default against the Defendant for failure to pay into the registry of the Court the amount ordered by Judge Simms, and I think the motion should be disposed of, and since the trial has been recessed, the case can be reset for trial. Then on the entry of whatever judgment may be rendered that time on the default, and this Motion to Stay Proceedings—the execution of the Writ of Possession would be considered.

MR. EDELSTEIN: At the same time as our trial then, Judge?

MR. GOMEZ: Do the Motions to Compel—

MR. EDELSTEIN: Judge, even a—

THE COURT: It can be considered as expeditiously as possible.

MR. EDELSTEIN: I don't know what the Court's ruling is on a default, but is the Court also disposing of

our affirmative defenses at the same time simultaneously or not?

THE COURT: Yes, yes, that would dispose of your affirmative defenses, but would not dispose of your Counterclaim or you Crossclaim.

Those would be transferred into the Circuit Court and in due course tried by the Circuit Court.

MR. GOMEZ: The Motion to Compel, that really goes more to what remains and the Crossclaim and Counterclaim should be—

MR. EDELSTEIN: Can we get the Circuit Court to handle that?

THE COURT: I think they relate to the Counterclaim and Crossclaim.

MR. EDELSTEIN: The question that I was asking previously, Judge—these all pertain to the affirmative defenses, but if the Court is striking them, the affirmative defenses, and entering—

THE COURT: Actually, I feel that any affirmative defenses would be stricken by the entry of a default.

MR. EDELSTEIN: Then these here would then pertain—

THE COURT: The Plaintiff would still have to prove the case.

MR. GOMEZ: Right, so we will bring up our Motion to Stay at the end if you are—

THE COURT: The possession?

MR. GOMEZ: I think that that will probably take care of it.

THE COURT: This Order which has been presented to the Court on the various motions, do you have any objection to that, Mr. Edelstein?

MR. GOMEZ: The Order on severance?

MR. EDELSTEIN: This is it.

THE COURT: The Order granting Plaintiff's Motion for Severance, and also transferring the Counterclaim and Crossclaim to the Circuit Court.

MS. JOYCE: Upon payment of the transfer fee.

MR. EDELSTEIN: I have no objection to it, Judge.

I believe that it is in accordance with Florida law.

THE COURT: You have no objection to the Court's—

MR. GOMEZ: Judge, that is fine.

MR. EDELSTEIN: Fine.

THE COURT: The title of the Order will be changed by adding and transferring the Counterclaim and Crossclaim to Circuit Court.

MS. JOYCE: Respectfully, Your Honor, Counsel—

MR. EDELSTEIN: I think it says that in the Order. Oh, I am sorry.

You are talking about the title being changed?

MS. JOYCE: Counsel is to also deposit the transfer fee, or a—

MR. EDELSTEIN: That is specified in here, in the Order that—

THE COURT: Plaintiff's Motion for Severance will be hereby issued and granted, and further ordered a judgment and the Counterclaim and Crossclaim filed herein by the Defendant Chris Karsteter will be in there hereby, so from Plaintiff's Complaint for removal of

tenant and same shall be transferred to Circuit Court upon payment of transfer by the said Defendant, and that it is further order of the Judge that the County Court shall retain jurisdiction over the Plaintiff's Complaint for removal of the tenant, and default having been entered against said Defendant for failure to deposit $1,460 rent into the registry of the Court, that the said cause shall be advanced on the County Court calendar and set for trial on the default.

Is there any objection to the form of that?

MR. GOMEZ: No, that sounds correct.

MS. JOYCE: Your Honor—

MR. EDELSTEIN: It sounds all right, but we would object to the Court's ruling, but we recognize that that is an accurate statement of what the Court's ruling was.

THE COURT: Specified as to the form; in other words, I have stricken the jury trial because under default, there would not be a jury trial.

MS. JOYCE: Right.

MR. GOMEZ: I'm not sure of that, Judge, but if that is your ruling, that is your ruling.

THE COURT: Let the record show that the Defendant, Chris Karsteter, through his Counsel has presented for filing, a Motion to Stay Proceedings in Execution.

Counsel can notify the calendar clerk, and Ms. Joyce you may proceed to get a date from the County Court doing the trial on default, and give notice to Counsel, and I will not be here next week, so it would have to be the week after that.

We are beginning again on August 4, so if you are considering any emergencies, I will not be here to speak to.

MR. EDELSTEIN: We would ask one thing and that is, in the Notice Setting Cause for Trial, it also indicates our Motion to Stay and for taking of the execution also be heard at the same time, and that that be reflected on the notice in accordance with your Order.

THE COURT: Right.

That is a little premature, but you can do it.

MS. JOYCE: The Notice of Hearing?

MR. GOMEZ: All right.

THE COURT: Is there anything else?

MS. JOYCE: That is all, Judge.

MR. GOMEZ: Judge, thank you very much.

(Thereupon, the hearing was concluded.)

CERTIFICATE

STATE OF FLORIDA)

COUNTY OF DADE) ss:

I, JAN WILLITZ, Court Reporter and Notary Public in and for the State of Florida, do hereby certify that I was authorized to report the proceedings had before The Honorable MATTIE BELLE DAVIS: held on July 22, 1986; that the foregoing pages, numbered 1 through 64, represents an accurate record of my shorthand notes taken at that time.

DATED this 9 of January, 1987.

/s/ JAN WILLITZ

JAN WILLITZ

APPENDIX L

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA
CIVIL DIVISION

CASE NO. 86-3797 CC 23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN and COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR SEVERANCE and Transferring Counter-Claim and Cross Claims to Circuit Court

THIS CAUSE came on to be heard before the Court on July 9, 1986, upon the Plaintiff's Motion for Severance of the Counterclaim and Crossclaim from the Complaint for Removal of Tenant and after hearing argument of counsel, and the Court having announced its ruling that the Plaintiff's Motion for Severance was granted, but that the Court would not sign the Order Granting Severance for a period of ten (10) days in order to permit Defendant, CHRIS KARSTETER, the additional time within which to submit case law supporting his position, and the said Defendant having subsequently withdrawn his opposition to the said Motion, and the Court being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that Plaintiff's Motion for Severance be, and it is hereby, granted, and it is further

ORDERED AND ADJUDGED that the Counterclaim and Crossclaim filed herein by Defendant, CHRIS KARSTETER, be, and they are hereby, severed from Plaintiff's Complaint for Removal of Tenant and same shall be transferred to Circuit Court upon payment of transfer fee by the said Defendant, and it is further

ORDERED AND ADJUDGED that County Court shall retain jurisdiction over the Plaintiff's Complaint for Removal of Tenant and Default having been entered against said Defendant for failure to deposit $1460 rent into the Registry of the Court, [MBD] that the said cause shall be advanced on the County Court Calendar and set for trial on the Default [MBD].

DONE AND ORDERED at North Miami Beach, Dade County, Florida, this 22 day of July, 1986.

/s/ Mattie Belle Davis

County Court Judge pro tem

Conformed copies furnished to:

WISEHEART & JOYCE, P.A.
Attorneys for Plaintiff/Counter-defendant

RESS, GOMEZ, ROSENBERG, HOWLAND & MINTZ, P.A.
Attorneys for Defendant/Counter-plaintiff/
Cross-plaintiff, Chris Karsteter

GREENBERG, TRAURIG, ASKEW, HOFFMAN,
LIPOFF, ROSEN & QUENTEL, P.A.
Attorneys for Defendant/Cross-defendant,
Miami Lakes Inn, Athletic Club and Golf Resort, Inc.

IN THE COUNTY COURT IN AND FOR
DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO; 86-3797 CC 23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Plaintiffs,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Counterclaimant,

vs.

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION,

Counterdefendant.

CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Crossclaimant,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation,

Crossdefendant.

Transcript of hearing before The Honorable MATTIE BELL DAVIS on Monday, August 4, 1985, 17022 Northeast 19th Avenue, North Miami Beach, Florida.

APPEARANCES:

WISEHEART & JOYCE
BY: ELIZABETH W. JOYCE, Attorney at Law
On behalf of The Graham Companies

RESS, GOMEZ, ROSENBERG, HOWLAND & MINTZ, P.A.
BY: STEVEN A. EDELSTEIN, ESQ. and ROLAND GOMEZ, ESQ.
On behalf of Defendant Karsteter

GREENBERG, TRAURIG, ASKEW, HOFFMAN, LIPOFF, ROSEN & QUENTEL, P.A.
By: Marianne A. Vos, Attorney at Law
On Behalf of Miami Lakes Inn, Athletic Club and Golf Resort, Inc.

ALSO PRESENT:

DAVID PALGON, ESQ.
BETH MARTINEZ
JOHN HALLEY
SUSAN NORTON, Attorney at Law
JOHN J. BOYLE
EILEEN PEARSON

(Thereupon, the following proceedings were had in chambers:)

THE COURT: Counsel, please make your appearances known for the record, please.

MS. JOYCE: My name is Elizabeth W. Joyce for the Plaintiff, the Graham Companies.

MR. EDELSTEIN: My name is Steven A. Edelstein, and this is Roland Gomez for the Defendant, Chris Karsteter.

MS. JOYCE: This is an action for non-payment of rent, and the Graham Companies are the landlord and

the Plaintiff, and the Defendant is Miami Lakes Inn, who is the tenant on the lease for a duplex apartment.

The Defendant, Chris Karsteter, is a tenant in possession, and he is a former employee of the other Defendant, Miami Lakes Inn, and Miami Lakes Inn is the tenant on the lease, and they refused to pay rent for the month of June, and the Graham Companies are the landlord, and they served a three-day notice naming both of the Defendants, naming Miami Lakes Inn and Chris Karsteter, giving them the opportunity of a three-day grace period, and neither tenant has paid rent for the month of June, and the landlord now has got to recover possession and a money judgment for rent which is just a suit for the specifics of the default which has been entered by the Court against the Defendant, Chris Karsteter, on July 22 for failure to deposit the rent in the Court Registry. The Defendant—the other Defendant, Miami Lakes Inn, has filed an Answer admitting all of the allegations of Plaintiff's Complaint and stipulates to the judgment.

We are here today, Your Honor, for the Plaintiff to put on testimony as to just three things, and one is the amount of monthly rent owing at the end of the lease; two, the service of the three-day notice, and three, non-payment by the Defendant for the month of June.

I have just three witnesses, and if it please the court, I will call my first witness.

THE COURT: Mr. Edelstein, Mr. Gomez? Who is representing whom here?

MR. EDELSTEIN: We both represent the Karsteters, Judge.

THE COURT: All Right.

MR. GOMEZ: Judge, this is Mr. Karsteter, and I don't believe that he has been here before.

THE COURT: At the hearing before, I think the Court gave the Defendant Karsteter an opportunity to deposit into the Registry of the Court the rent due, and there was a refusal on the part of Counsel, I believe, at that time, and I don't seem to have that memorandum in the file.

MR. EDELSTEIN: Judge—

THE COURT: Nor an Order.

MS. JOYCE: I have the Order, Your Honor.

THE COURT: As I recall, there was a refusal on the part of Counsel for the Defendant to deposit such money; is that correct?

MR. EDELSTEIN: Yes, Judge, it has continuously been Mr. Karsteter's position that there was no money due, and that they were there under contract which provided for a zero amount of rent, and that was in his principal defense, one of his defenses, and the requirement that he deposit any funds into the Registry of the Court was complied with insofar as he was required to pay a zero amount for rent, and that is exactly what he deposited into the Court Registry.

Mr. Karsteter also challenged the constitutionality of the requirement that he make such a deposit on the basis that it denied his right to access to the Court, and in accordance with the statute, Your Honor has previously entered a default and stricken his defenses.

His position has been that those defenses, should he be permitted to present those defenses, regardless of whether he makes a deposit to the Registry of the Court or not, that the requirement that he make a deposit into the Court Registry conditioned on his presenting his defenses violates his constitutional rights and access to the Court and we have preserved that, I believe, sufficiently for appellate purposes.

One of our motions that also remains to be disposed of today is in conjunction with the presentation of Plaintiff's testimony, which is whether or not the Court will stay a proceeding pending an appeal or not.

THE COURT: Has Counsel for the Plaintiff furnished the Court a copy of the Order entered?

Would you like the July 22, 1986 Order, the original of which is in Court file for some reason, but in the Order, the Motion for Severance as to the Counterclaim and Crossclaim was granted, and the Counterclaim and Crossclaim were transferred to the Circuit Court by paying the transfer fee by the Defendant.

MR. EDELSTEIN: That has been sent in, Judge.

THE COURT: I bet your pardon?

MR. EDELSTEIN: The transfer fee was mailed to the Clerk's Office.

THE COURT: And, also that the County Court should retain jurisdiction over the Plaintiff's Complaint for removal of tenants and default has been entered against said Defendant for failure to deposit $1,460 rent into the Registry of the Court, and the cause shall be advanced on the County Court calendar and set for trial on the default.

MS. JOYCE: That letter is here today, Judge, and as I say, we have those three witnesses to prove up the amount of rent, the service of the rent, and non-payment.

THE COURT: Ma'am, would you raise your right hand, please?

Thereupon:

BETH ELIZABETH MARTINEZ

was called as a witness by the Plaintiff, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. JOYCE:

Q Please state your name.

A Beth Elizabeth Martinez.

Q Please speak up for the Court and the court reporter.

A Beth Elizabeth Martinez.

Q By whom are you employed?

A The Graham Companies.

Q I am going to show you what purports to be a lease agreement for the premises at 15461 Durnford Drive, Miami Lakes, Florida, between the Sengra Corporation as landlord and Miami Lakes Inn, Athletic Club, and Golf Resort, Inc. and ask you if you can identify that as your signature?

A Yes, it is.

Q What is the relationship between the Sengra Corporation, the landlord on the lease, and the Plaintiff here, The Graham Companies?

A The company, the Sengra Corporation—

MR. GOMEZ: Well, I object.

THE WITNESS: —is The Graham Companies.

MR. GOMEZ: One second. I object because she is not qualified as someone able to tell about the relationship about The Graham Companies, and is she employed by The Graham Companies?

MS. JOYCE: Yes, that is the question that we just went over, and that is what we are talking about.

MR. GOMEZ: I heard that she identified her name on the lease.

MS. JOYCE: She identified her name on the lease and she said, "I work for The Graham Companies."

MR. GOMEZ: That is not a sufficient predicate. If she is employed—

MS. JOYCE: No problem. I will re-ask the question as to the relationship, which is not really essential, but I just thought that it would be informative.

BY MS. JOYCE:

Q Ms. Martinez, what is the monthly rent on the lease agreement?

MR. GOMEZ: The lease speaks for itself.

MS. JOYCE: I have no problem with that, Judge. It certainly does, and I move that that lease be admitted into Evidence as Plaintiff's Exhibit Number 1.

THE COURT: Counsel?

MR. GOMEZ: I have no objection.

THE COURT: It will be admitted as Plaintiff's Exhibit Number 1.

MS. JOYCE: I have no further questions of this witness.

The second witness is Mr. John Halley.

Where is John?

MR. HALLEY: Right here.

THE COURT: Please raise your right hand and be sworn.

Thereupon:

JOHN HALLEY

was called as a witness by the Plaintiff, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION:

BY MS. JOYCE:

Q Please state your name.

A My name is John Halley.

Q By whom are you employed?

A The Graham Companies.

Q What were your duties in May and June of this year, 1986?

A I worked as a Property Manager for Meadow Walk Apartments the Eagle Nest duplexes.

Q Mr. Halley, I'm going to show you what purports to be a three-day notice, and ask you if you can identify it.

Do you recognize this?

A Yes, that is a three-day notice.

Q Was that prepared under your direction?

A Yes.

Q What is it?

A It's a three-day notice for non-payment of rent allowing Mr. Karsteter three days to pay rent.

Q Why was that notice prepared?

A I was advised by Mr. David Yantz that at the end of April that he would not be paying rent for the month of June, and it was prepared to give Mr. Karsteter an opportunity to pay during that three-day period.

Q Did you serve this notice?

A Yes, I did.

Q How did you serve this notice?

A I served it to Mr. Karsteter at the place of residence, 15461 Durnford.

Q When did you serve the notice?

A On June 2, 1986.

Q What payments, if any, did you receive on the duplex apartment from anyone after you served the notice?

A I received no payment on that unit.

MS. JOYCE: I move that that—

MR. GOMEZ: I have no objection.

MS. JOYCE: I would move that that notice be admitted into evidence as Plaintiff's Exhibit Number 2.

THE COURT: It will be admitted as Plaintiff's Exhibit Number 2.

MS. JOYCE: I have no further questions of this witness.

CROSS EXAMINATION

BY MR. GOMEZ:

Q You mentioned Mr. Yantz, and who is Mr. Yantz?

A I believe that he is the President of Miami Lakes Inn.

Q So he, in theory, is the other Defendant in this action?

A I believe so, yes.

Q And, he is the one that told you that they would not be paying any further rent?

A They had advised me back at the end of April that Mr. Karsteter was no longer employed.

Q That was not my question.

A And, that they would not be paying rent. They would pay rent for May and would not be paying for June.

Q We went through this the last time when I tried to ask you some questions and you went a little bit beyond.

I will try to make my questions simple, and you just answer them directly, all right?

A And, then I will explain.

Q I didn't ask you that.

A Well, I have to explain if you are misleading me with that question.

Q If you could answer yes or no and then if you think that it requires an explanation, by all means, do that, because I don't want to mislead you with any questions.

A Okay.

Q Mr. Yantz told you that they were no longer going to pay rent?

A Correct, yes.

Q And, did Mr. Yantz or Miami Lakes Inn and Country Club ever pay rent before June, 1986?

A Yes.

MS. JOYCE: I object. That is a compound question.

I am sorry. The answer got in, but go ahead.

BY MR. GOMEZ:

Q Have you ever seen any books, receipts, checks made payable by Miami Lakes to The Graham Companies for rent on that?

MS. JOYCE: Your Honor, I would object as to any question that exceeds the scope of direct.

He has just testified to the three-day notice and—

MR. GOMEZ: He testified that Mr. Yantz told him he wasn't going to pay rent and that—

MS. JOYCE: No, sir.

THE COURT: The objection is overruled.

Go ahead.

THE WITNESS: I have seen a book where there was transferred money between the Miami Lakes properties and The Graham Companies.

BY MR. GOMEZ:

Q Have you seen the books since I took your deposition on June 24, 1986?

A Yes.

Q Did you bring that book with you?

A They are here.

Q Do you have it with you?

A I don't have it with me.

Q Who does?

MS. JOYCE: We have another witness.

MR. GOMEZ: He is not through testifying.

MS. JOYCE: He is testifying as to the three-day notice, and I asked him one question: Did he receive the payment, The Graham Companies.

MR. GOMEZ: That is not what you asked, but that is okay.

BY MR. GOMEZ:

Q So you have examined some books?

A Yes.

Q And, now were there actual payments made from these books that you looked at, and was there an apparent

transaction between the Miami Lakes Inn and The Graham Companies which is wholly an active company?

MS. JOYCE: I object. He is asking questions of this witness that completely exceed the scope of direct examination.

He is asking him about the books and records and he cannot testify to the books and records.

He testified to the service of the three-day notice.

THE COURT: He states that there are books and records here.

MS. JOYCE: There is another witness, the very next one, and that is the last witness which is the bookkeeper.

THE COURT: Then I suggest—

MR. GOMEZ: We can wait until that, Judge.

THE COURT: You can question the next witness.

MR. GOMEZ: He may leave if necessary.

THE COURT: Are you going to recall him?

MR. GOMEZ: I think not, Judge.

MS. JOYCE: Your Honor, I have one more witness, and it is proper, and let me say this one thing at the outset.

MR. GOMEZ: Are we going to have an opening statement at this point in the case?

MS. JOYCE: It is just a brief statement as an introduction to this witness.

MR. GOMEZ: Rather than doing that, why not do it by question and answer? That is the way we proceeded before.

THE COURT: Proceed.

MS. JOYCE: I have no problem with that.

THE COURT: Please raise your right hand and be sworn.

Thereupon:

EILEEN PEARSOLL

was called as a witness by the Plaintiff, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. JOYCE:

Q Please state your ame.

A My name is Eileen Pearsoll.

Q By whom are you employed:

THE COURT: Is that E-I-L-E-E-N, and your last name is P-E-A-R-S-O-L-L?

THE WITNESS: Yes.

BY MS. JOYCE:

Q By whom are you employed?

A By The Graham Companies.

Q What is your position?

A I am an accounts receivable supervisor.

Q Are the rent records for the Eagle Nest Duplexes maintained under your supervision?

A Yes, they are.

Q And, are those rent records for the Eagle Nest Duplexes maintained in the regular course of business?

A That's right.

Q And, what records do you have with you today?

A Today I brought the month-end amounts adjusted for May and June, 1986.

Q What do those records show?

A They show the amount of the duplexes that were charged for the apartment rentals for at least two months for the different accounts, which would be accounts—

Q Does this include where the rent was placed on the duplex at 15461 Durnford Drive during May and June?

A Yes, it does.

Q May I see those?

MS. JOYCE: Your Honor, I move that—

MR. GOMEZ: May we take a look at that? Is this a copy for us?

MS. JOYCE: Those are originals, and you can have them as soon as I introduce them, and I just have two more questions and then we will—

MR. GOMEZ: I assume that these slips are not part of the official records.

MS. JOYCE: No, they are not, but they are just to refresh the recollection of the tenant, and you are welcome to look at them after the witness.

You are welcome to look at them, and we are going to introduce them.

MR. GOMEZ: May we take it off?

MS. JOYCE: Yes, this is for the witness.

MR. GOMEZ: I have got to struggle. I am not an accountant, Judge.

Can I ask the lady if this is the one we are talking about?

THE WITNESS: Yes, the highlighted one.

MS. JOYCE: Perhaps you can elicit that on cross examination, and let me finish with the testimony.

I'm going to introduce these two, so I am going to introduce them and ask two questions and you may elicit whatever explanation you want.

MR. GOMEZ: I don't want to object, but I can't agree to what I am looking at, so when they go in, they go in.

MS. JOYCE: I would move that these rent records for May and for June be admitted as Composite Exhibit Number 3.

MR. GOMEZ: Can we perhaps just give me an opportunity to voir dire on cross examination before they go in?

MS. JOYCE: Before you grant that, Judge, can I say that we should keep this in perspective?

This accountant is going to testify to non-payment by either Defendant, and non-payment has been stipulated to by Mr. Gomez in Chris Karsteter's deposition on page 13. I am sure that he is not going to change his mind, and he states, "We will stipulate that he had not paid any money on the rent due."

"Did you ever make payment on rent," because it is his position that he doesn't owe any rent, so Mr. Gomez, on behalf of Defendant Karsteter, has stipulated that no payment was made.

Now how about the other Defendant, the other Defendant being Miami Lakes Inn who has also stipulated that there was also no payment?

MR. GOMEZ: What does that have to do with the documents?

MS. JOYCE: He is about to launch into a lengthy, unnecessary voir dire and cross when we didn't even have

to prove up through Eileen that issue of payment, but he wants to bring before the Court our bookkeeper, but we have to keep it in perspective.

He also stipulated to non-payment and so has the other Defendant.

THE COURT: Are you offering these records into evidence?

MS. JOYCE: No, Your Honor. I am just bringing it to Counsel's attention, and I am sure that he is not going to change his mind. He stipulated to the fact.

THE COURT: I thought I heard you offer them in, these records here.

MS. JOYCE: Yes, these records here.

THE COURT: You are offering those into evidence?

MS. JOYCE: These I am offering, the rent records. I am offering them into evidence.

THE COURT: Then he has a right to voir dire the witness.

You may proceed.

MR. GOMEZ: Are you through with the witness?

MS. JOYCE: I have two questions.

THE COURT: You may proceed with voir dire and we will decide whether we will admit them or not.

MS. JOYCE: Is your voir dire going to establish her personal knowledge as to these and this information?

MR. GOMEZ: I just want to know what this is because I don't know what I am looking at.

MS. JOYCE: You will have an opportunity to cross, and then you can have an explanation at that time.

THE COURT: He has a right to voir dire at this time.

MR. GOMEZ: Could you tell me what I am looking at, please? I hate to sound stupid but—

THE WITNESS: That is the month-end journal that gets sent to data processing, and there is one for the month of May and one for the month of June.

MR. GOMEZ: Who does that?

THE WITNESS: My accounting clerk.

MR. GOMEZ: That is something under your supervision?

THE WITNESS: Yes, I have one here for the month of May and one for June, and the highlighted items were simply to distinguish the accounts receivable for the duplexes for the month of May which consisted of $2,150, and of that $2,150, they were charged against these two accounts.

MR. GOMEZ: How do you identify these accounts as being the units we are talking about from what you have in front of you?

THE WITNESS: Because this is by the initials on the account, GFB which stands for general food and beverage, and GMR which stands for general maintenance and repair.

MR. GOMEZ: How does that tell you that those are the units we are talking about?

THE WITNESS: Because I happen to know what the accounts' definitions are.

MR. GOMEZ: But if somebody came down here and recovered this or if I was going to show you something that says "GFB," could they tell what you were talking about?

THE WITNESS: I doubt it.

MR. GOMEZ: Then the figure that you have here actually includes more than one unit because you are talking about $2,150 for a one-month period?

THE WITNESS: Right.

MR. GOMEZ: And, the lease has been put into evidence, and that has been given to the Judge, which shows that the alleged claim of rent for a month is $750.

For the month of May, how would the Judge, looking at this document, be able to see any relationship between $2,150 for the month of May and the lease which says $750?

Could the Judge do that from looking at this document?

THE WITNESS: Well, I also—

MR. GOMEZ: How would the Judge do that from looking at the document?

MS. JOYCE: Your Honor, I have to object. He is not cross examining her.

He is not doing any voir dire to find out if this witness is qualified to testify to the rent records, and he is asking her to explain it, and I haven't even completed my direct of her yet.

We still have more.

THE COURT: He may voir dire to see if there is anything, any relationship to the $2,150.

MS. JOYCE: The document isn't even introduced, and that will clarify the breakdown.

What is that ledger card? He jumped in.

THE COURT: You may proceed.

MR. GOMEZ: Do you remember my question?

How could the Judge, looking at that document, show any relationship between this document and the lease that has been put into evidence?

THE WITNESS: I think until she sees the other piece of information I have for her, she probably couldn't at this point in time.

MR. GOMEZ: So there is other material to look at?

Is there additional material to look at, and let's—

MS. JOYCE: I would like to finish my direct now.

THE COURT: You are offering those into evidence now?

MS. JOYCE: Yes, Your Honor.

I would move that these two be admitted into evidence as Plaintiff's Exhibit Number 3 as a composite exhibit.

MR. GOMEZ: Just for the record, I am objecting because I really haven't had an opportunity to fully voir dire, and there may be other documents that may explain this and I really think that you should defer that.

THE COURT: Well, she has testified that these are records relating to that, the property, and it will be admitted as Plaintiff's Exhibit Number 3.

MS. JOYCE: 3 and 3-A?

THE COURT: And 3-B.

BY MS. JOYCE:

Q Eileen, I'm going to show you what has been admitted into evidence as Plaintiff's Exhibit 3-A.

A Okay.

Q And, I'm going to ask you if this highlighted portion where it says "accounts receivable" and next to it, the figure of $2,150—

A Right.

Q —and a little checkmark next to it, what does the $2,150 comprise?

A It is comprised of three duplex rentals that we have.

Q Who are those rents to?

A One is to—for the chef and one—or the maintenance person, and one is for the food and beverage director.

Q And the food and beverage director is whom?

A Mr. Karsteter.

Q Now for the month of May.

A And, those, the amount of $2,150 comprises the total of those three units.

Q And, what does the checkmark out here in the right column mean?

A The checkmark? That means that that figure is remaining the same as it was the month before and there has been no change.

Q What is the next part that is highlighted in pink?

A The pink highlight on the line right beneath the $2,150 rent amount on the first page, that line is the—it is $1,450, which makes up two apartment rentals for the month of May for the general food and beverage account.

Q And, the last pink line is what?

A It is $700, and $700—I am sorry—charged to—against the general maintenance and repair account.

Q Let me back up and clarify one thing and ask you again, rather than $2,150, I believe you just testified that that comprises the chef's apartment and the maintenance man's apartment and the former Karsteter apartment.

A That's correct.

Q What are those three rents?

A One is $1,150 a month.

Q Which one is that?

A That is Karsteter's.

One is $720, and that is the chef's, and the other one, the last one, is $700, and that is for the maintenance person.

Q Now am I going to show you what has been admitted as Plaintiff's Exhibit 3-B for the month of June, and I'm going to point to the highlighted strip in yellow, and I see the figure of $2,150 on the printout, and I see a line drawn through the $2,150 out in this column to the right here, and I see $1,420.

A That's right.

Q $1,420, and there is not a checkmark and that was back in May?

A That tells me that there has been a change in the amount and the $700, and the $1,420 now is made up of the chef's and the maintenance man's apartment, $720, and the $700—totaling $1,420.

Q Which of the three duplex apartments was not paid for the month of June?

A Karsteter's.

Q I have one more question to ask you: Are you able to testify from your own personal knowledge that the $2,150 represents at least three duplexes which you have just nicely explained for us, and do you have any printout or other records from your office to help the Court and assist the Court in setting out the chef's apartment rent, the maintenance man's apartment rent, and Karsteter's?

A Yes, I do. I have a master listing of each of the duplex apartments and the amount of the rent per month.

Q And, was this prepared in the regular course of business?

A Yes, it was.

Q Was this prepared under your supervision?

A That's right.

MR. GOMEZ: What is this number there? What is this number?

THE WITNESS: 901.

MR. GOMEZ: The one on top?

MS. JOYCE: Your Honor, I would move that this be admitted as Plaintiff's Exhibit Number 4, and I just have two more questions.

THE COURT: It will be admitted as Plaintiff's Exhibit Number 4.

BY MS. JOYCE:

Q Eileen, explain to me what payment, if any, was made on the duplex apartment at 15461 Durnford Drive for the month of May.

A $730. That was the amount of rent for May.

Q Was that paid?

A It was paid by the Miami Lakes Inn. It was charged to Miami Lakes Inn.

Q What payment, if any, was made on duplex apartment 15461 Durnford Drive for the month of June, 1986?

A There wasn't a payment received.

MS. JOYCE: Thank you.

Your Honor, I have no further questions of this witness.

Once again, I must state that the whole issue has been stipulated to so I think restricted cross is in order.

THE COURT: You may proceed.

MR. GOMEZ: May I have those papers back, please?

CROSS EXAMINATION

BY MR. GOMEZ:

Q 901 is the duplex that we are talking about here?

A That's correct.

Q And, that provides for an annual lease?

A That's right.

Q And, it says that they moved in on June 14, 1985?

A That's right.

Q Have you seen the lease that we have just given to the Judge?

A Not for some time.

Q Would you like to take a look at it?

A Okay.

MR. GOMEZ: May she see the lease?

BY MR. GOMEZ:

Q Now the records that you have just testified to indicate that these folks moved in on January 14, 1985, and what is the date of that lease?

MS. JOYCE: I object to that question because it exceeds the scope of direct.

She testified that these records help her in compiling this figure on the other sheet, and that sheet is used to interpret this sheet, and this sheet was not introduced to show the period of occupancy, and that is not an issue.

It exceeds the scope.

MR. GOMEZ: It is in evidence, and I think that I am allowed to ask questions on it.

She put it in.

MS. JOYCE: They're immaterial and irrelevant questions. This exhibit was offered for a different purpose.

THE COURT: What is the relevancy as to the rent for June?

MR. GOMEZ: Well, it has to do with the fact that she is interpreting figures, and you can look at these figures and there is nothing on here which is included in her testimony, but she has personal knowledge of all of these items, as to when the rent was paid, which unit this rent was paid on as Mr. Karsteter's and that is not on these documents, and I am now asking to see just how accurate her relationship—her information is on this whole proceeding, and by showing that, it is in contradiction to what has been presented to you by Counsel and put into evidence.

They have got a lease here that is directly contradictory to what these documents state, and they put them in evidence, and they created the contradiction by their own evidence, and I think that I am allowed to go into that.

THE COURT: The objection is overruled.

BY MR. GOMEZ:

Q What is the date on the lease?

A It says that the lease was entered into on December 26, 1985.

Q What was the start-up date of the lease?

A October 1, 1985.

Q Was that the first time that this lease had been provided to the Karsteters when they were given a rent-free occupancy? Do you know about that?

A That, I don't know.

MS. JOYCE: I object to the form of the question. It was leading and it was compound.

Strike that it was compound.

He asked her if this was the case, did she know.

THE COURT: The objection is sustained.

BY MR. GOMEZ:

Q Where did you get this date of January 14, 1985, moved in to the duplex that you say is related to what we are all here for today?

A That is the date that the computer—when the information is fed into the computer—the computer actually set that up.

Q So that is wrong?

A No, it is not wrong.

Q It is not wrong?

A No.

Q So it says that they moved in on January 14, 1985; is that correct?

A That doesn't mean that—it may be their move-in date. It is the date it was—the specific information was entered into the computer.

Q And, so if mid-way down we have one that says, "Moved in September 12—"

MS. JOYCE: Your Honor, I object.

It is irrelevant and exceeds the scope. He is questioning on some other apartment and some other rent and another move-in date.

The move-in date is irrelevant to these proceedings and we are talking about what the rent paid for in June was, and that is the issue, what she has testified to, and that is what she has in her records, and that is what she has testified to.

THE COURT: What is the date that you are referring to for that apartment?

MR. GOMEZ: I'm not sure, because I don't what apartment we are talking about here.

MS. JOYCE: He is talking about—

MR. GOMEZ: I appreciate your help, but if you want to help me—

MS. JOYCE: Your Honor, I—

MR. GOMEZ: I'm not sure which apartment we are talking about, and these are in order on a computer printout sheet, indicating that the time they punched into this computer was January 14, 1985, and midway down here, we have a move-in date of September 12, 1984, and it presents a question to me where, if this reads as a computer printout, how you would have midway down a sheet a date that pre-dates that by a year and a half, and there may be a very logical explanation, Judge, but I don't know the answer. That is what I want to find out.

MS. JOYCE: That explanation is completely irrelevant and is taking an unnecessary amount of the Court's time.

That document was entered, Judge, to demonstrate that the three highlighted amounts of rent total up to the journal entry.

THE COURT: Let me see this. It is the date of 7/27/83 which precedes the date of the lease agreement.

The objection is sustained.

MS. JOYCE: Your Honor, again, let me re-assert this.

THE COURT: I have sustained your objection.

MS. JOYCE: Thank you, Judge.

BY MR. GOMEZ:

Q Getting away from these documents, because I am getting confused to be honest with you, and you are talking in terms of Mr. Karsteter as an employee of The Graham Companies; it that what you said, your direct testimony?

A I don't think you asked me about Mr. Karsteter.

Q I didn't. Ms. Joyce was asking the questions.

MS. JOYCE: Right, I know that, Counsel.

MR. GOMEZ: Are we okay?

MS. JOYCE: Yes.

BY MR. GOMEZ:

Q Mr. Karsteter is an employee of The Graham Companies.

MS. JOYCE: I object. She just testified to the rent records, and let me re-assert that a default has been entered against the Defendant that Mr. Gomez represents.

Miami Lakes Inn has admitted all of the allegations of the Complaint, and we have put on our case as to strictly just what the facts are that that bookkeeper has showed you the facts that no payment was made, but in light—

THE COURT: What is the relevancy of his employment by The Graham Companies?

MR. GOMEZ: Well, we have a situation here where they have indicated that there has been a non-payment of rent, and I am trying to find out who was supposed to be paying the rent to who. Who was it to?

MS. JOYCE: That is not inappropriate. Default has been entered against him, and he stipulated that no payment was made and Miami Lakes has stipulated that no payment was made, so why is he inquiring about whether payment was made?

THE COURT: The objection is sustained.

BY MR. GOMEZ:

Q The documents were put into evidence from what you testified, and there was no payment for the month of June, 1986?

A That's correct.

Q Is that correct? Do these records indicate that there was a payment for the month of May?

A Yes, they do.

Q Can you tell me that though, because how does it show that? I see a checkmark by those three things.

A Okay. This shows you that the three units that are charged for the duplexes to the appropriate accounts totaled $2,150, and this shows you the allocation of the receivables against those two accounts, and to me that tells me that they had all been cleared in June, and you all notice only two of those have been cleared and charged to an appropriate account leaving $750 only for the Karsteters.

Q Where does it show that there was any payment received on these three units?

A Because in accounting principles if you take a credit for $2,150 and add a charge for a debit, $1,450 and $700, that is normal accounting practice.

Q But does this document show what you are telling us?

A As far as I am concerned it does, yes.

Q Then how was this document different then the document for payment?

A Because the figures are different.

Q Does it say $2,150, $1,450, $700 and a checkmark by them?

A It says "last month" meaning a payment of $2,150, and that has been crossed out and it says "changed to $1,420," and that is the entry that is going to be keypunched by data processing.

Q That hasn't been done yet?

A Sure, it was done.

Q Where is that record that shows that it was keypunched to data processing?

MS. JOYCE: I object to the question. It is going way beyond the scope. She gave an explanation.

THE COURT: Sustained.

BY MR. GOMEZ:

Q These are accounts receivable, are they not?

A That's right.

Q And, what records do you have showing accounts receivable, paid?

MS. JOYCE: I object again. That exceeds the scope. All she is doing is testifying that the amount was not paid, and she has done that.

THE COURT: Sustained.

MR. GOMEZ: Judge, I don't want to belabor a point with you if you think that I am barking up a wrong tree, and I don't want to take up your time, but I really don't understand what I am looking at because of my ignorance, and I am dragging this out and I apologize if you have heard enough.

THE COURT: I am hear to hear anything.

MR. GOMEZ: I don't want to get you mad at me at all.

THE COURT: I am not mad at anybody.

MR. GOMEZ: I know that.

THE COURT: I am trying to absorb it.

MS. JOYCE: I appreciate counsel's candor in this respect.

Counsel, I will remind you that you did stipulate to non-payment, and we have two other issues today, and I know that you have a motion you want heard, and we have another item too, so if you have stipulated that your client didn't make any payment—

THE COURT: Has the Plaintiff concluded?

MS. JOYCE: The Plaintiff has concluded, Judge.

THE COURT: Does the Defendant have any testimony to offer—

MR. GOMEZ: No.

THE COURT: —with respect to the possession issue?

MR. GOMEZ: No.

THE COURT: Judgment for removal will be rendered in favor of the Plaintiff against both Defendants.

MS. JOYCE: Your Honor, respectively, I have one witness as to attorneys fees which I think will take just a few moments under Florida Statute 83.48 where prevailing parties are entitled to attorneys fees, and I have Mr. John Boyle with me who is—

THE COURT: Raise your right hand and be sworn, please.

(Thereupon, John Boyle was duly sworn.)

MS. JOYCE: I think that it might be helpful to the Court, too, if I would be sworn in just for the purposes of assessing attorney's fees.

THE COURT: All right, raise your right hand and be sworn.

(Thereupon, Ms. Joyce was duly sworn.)

MS. JOYCE: My name is Elizabeth W. Joyce, and I am an attorney admitted to the Florida Bar and am with the firm of which I am a member of Wisehart & Joyce, P.A., and there was an agreement with the Graham Companies, and we agreed to handle this case on the basis of a flat fee of $75 for the handling of the initial pleadings, and then it was contested, and our fee was to be at the rate of $100 per hour, and we performed a total of 38 hours of legal services of which 37 hours were attributable to the complaint in this action.

We prepared bills, and we sent the original to our clients, and I have other copies here for those 37 hours, and I have penciled out the one hour that pertains to the services rendered in connection with the counterclaim and each service performed which is itemized on the bills and a value is assigned in tenths of hours, and the total bill on the complaint alone which is all we are talking about for attorney's fees is $3,705, and we have a figure where our clients incurred court costs in the total amount of $543.45, and I have an affidavit as to the cause.

I would submit a copy of the bills to the Court.

MR. GOMEZ: May I see them?

MS. JOYCE: Yes.

MR. GOMEZ: Is there a copy for me?

MS. JOYCE: This is the only copy that we have, and that is why I wanted to give it to the Court, but I will show it to you first.

MR. GOMEZ: Are the costs in accordance with the Florida Supreme Court guidelines for what you are claiming?

MS. JOYCE: They are.

MR. GOMEZ: Let me see those, please.

THE COURT: Do you have an affidavit?

MS. JOYCE: I do. Here is my affidavit of costs and counsel has the bills.

THE COURT: Did you furnish a copy to him?

MS. JOYCE: Here is a copy, and actually it was Marianne's copy, and here is your copy.

Your Honor, I have no further comment as to attorney's fees and John Boyle is here as another witness.

THE COURT: You may proceed. Are you looking at the bills?

MR. GOMEZ: Yes, ma'am. If I could just have a second—

THE COURT: Take your time.

MR. GOMEZ: Did this gentlemen review your file?

MS. JOYCE: Yes, he has.

MR. GOMEZ: To expedite this, you can go ahead, and I will try to listen.

Thereupon, John Boyle was called as a witness by the Plaintiff, and having been previously sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MS. JOYCE:

Q Mr. Boyle, please state your name.

A John J. Boyle.

Q Are you a member of the Florida Bar?

A I am.

Q How long have you been practicing law?

A Since 1969.

Q Where do you practice?

A In South Miami.

Q What is the nature of your practice?

A Exclusively landlord/tenant law.

Q Have you held any positions with the Florida Bar?

A I am a member and have been a member for some years of the Florida Bar Landlord/Tenant Sub-Committee.

Q Have you held any positions with the Dade County Bar?

A I am presently chairman of the County Court Committee Civil Division and have held that post four times in the past.

Q Have you written any articles on landlord/tenant matters?

A I have written three articles on landlord/tenant law which were published in the Florida Bar Journal during the last five years.

Q Have you written any treatises on landlord/tenant law which have been published?

A I am writing a book on landlord remedies in Florida but it is a few months away from publication.

Q Are you familiar with what attorney's in Dade County customarily charge for legal services?

A Customarily, landlord/tenant work where a landlord attorney charges $125 an hour for office work and more for trial work up to $150 to $175 per hour.

Q Have you reviewed the file in this case?

A I have reviewed the file, yes.

Q Did you discuss the file with me?

A Yes.

Q Do you have an opinion as to the reasonable value of the legal services rendered by Plaintiff's Counsel in this case?

A I do.

Q Please tell the Court if you would, your opinion and what factors you considered in forming this opinion.

A I would say that a reasonable fee in this case would be $5,000, and that is based upon the number of hours which Ms. Joyce has put in. She says it is 37 hours, and if you include the trial time today, it is 37½, and I would multiply that times $125 and that comes out to about $4,700.

The excess would be figured in under the applicable disciplinary rules of the Bar Association for the skill and reputation of the Plaintiff's law firm.

Q Mr. Boyle, did you have an opportunity or did you consider the Load Star approach as set out in the Florida Patients Compensation Fund versus Rowe, which is a Florida Supreme Court case from May 2, 1985?

A The Rowe case has—

MR. GOMEZ: Excuse me; I believe that is something that a Judge does and not that an attorney does under that guideline, and he doesn't have to proffer that as for intended fees, not for hourly rates.

MS. JOYCE: Judge, I have no further questions of this witness.

Excuse me, let me finish with the last one.

BY MS. JOYCE:

Q You testified to the amount as well as to your other factors?

A Yes.

MS. JOYCE: I have no further questions.

CROSS EXAMINATION

BY MR. GOMEZ:

Q You did review Ms. Joyce's file?

A Everything except the depositions.

Q So your testimony then was dependent upon your having reviewed her file?

A Absolutely.

Q So for anyone else, and not that I am quarreling with the accuracy in which you testified to—

A You're entitled to.

Q But for anyone else to be in a position to tell what you reviewed, we would have to look at the file ourself?

A Anybody would, of course. That is customary.

MR. GOMEZ: May we look at your file?

MS. JOYCE: Yes. What I have is the main file.

MR. GOMEZ: Everything that he looked at is here?

MS. JOYCE: Right, and I can explain to you the breakdown to save some time here, and in the main file here are the four separate issues or the three separate issues that I had to research and put together law on severance and these other things, 8360 sub-paragraph 2 for the Constitutional attack and the final hearing file—

BY MR. GOMEZ:

Q I am trying to ask you some questions before we get into this, and you do agree that the severance has nothing to do with Rowe either here or—

A No, no. I am figuring the severance in on that, and let me explain this.

Ms. Joyce tells me that she spent an hour on that, but what I am figuring in on that is that she had to prepare through legal research and had to prepare to argue against your motion to transfer the whole case to the Circuit Court, and she said that she spent four hours on that research, and at the eleventh hour you conceeded the point, but nevertheless she did put in the time.

Q So there are four hours that have to do with the matter for the Circuit Court?

A It has to do with what the entire case is including the issue of possession which would be heard by a Circuit Court Judge.

Q Let me ask you something: From what I understand, your creditials as an expert in this field is that once default is entered in a landlord/tenant revision proceeding like this is there a trial that is required?

A Do you mean a default by the Court or by the Clerk?

Q By the Court.

A It is entirely up to the Judge.

Q Well, I am asking you as an expert.

A Yes, it is entirely up to the Judge and presented by the Clerk, of course, and that is routine who administrates at the trial, but where the judgment is entered in front of the Judge, you have got a hearing, and the Judge has wide discretion.

Q Do you know whether the Judge required that we have a trial?

A The case was noticed for trial.

Q That is not my question.

Do you know whether the Judge required that we have a trial?

A No.

Q Have you calculated in the time computations the fact that we were here two weeks ago and were prepared to go forward and that Ms. Joyce wasn't ready to go forward and we had to adjourn?

A Yes, sir.

Q How much time did you allocate for that hearing which ended up—

A She said that she spent an hour on that.

Q So you are saying that at the last hearing she spent an hour?

A The last hearing where it was put it until today.

Q One hour?

A Yes.

Q And, you are aware that we have two motions, a hearing scheduled then, and through some mixup, through Judge Davis sitting in here, through a misunderstanding, that we were informed there was no Judge present because

Judge Simms had a baby, and we left and we could have had the matter heard on that, and are you aware of how much time was allocated for that that was also wasted time?

A It was twice restated to me a couple of times the circumstances of Judge Simms and Judge Davis, and frankly I am confused.

Q Me too. Do you know how much time was allocated for that?

A No, I don't.

Q In terms of your hours and rates, is your hourly rate less than what Ms. Joyce is actually charging her client?

A Her rate is less.

Q Is it your position as being an expert that a party who has not employed an attorney should be held responsible to pay for attorneys fees than what an attorney contracts with her own client; is that your position?

A Do I understand you to mean that the party who does not hire an attorney is entitled to attorney's fees?

Q No, no. Ms. Martinez hires you for your good skill and you are suing me, and I become obligated under the law to pay your attorney's fees, and should I have to pay you more than what Ms. Martinez had agreed to pay you for doing the same work? Is that your position?

A My position is that a reasonable fee in this case is $5,000.

Q That was not my question.

A That is a legal question, and that is up to the Judge.

Q How should that question be interpreted to the Judge?

A I don't know.

THE COURT: Are you offering that invoice into evidence?

MS. JOYCE: I would like to. There are three, and I think that they are composites, and do you have the other one?

MR. GOMEZ: Both of them are there. I am sorry.

MS. JOYCE: There is a small one.

BY MR. GOMEZ

Q Once a default has been entered by the Judge as an expert in this field, what has to be done?

A Well, it depends on how far the default goes. Now if it is a question—

Q That is a question of possession once the default has been entered of possession, and what has to be done? Do all defenses have to be stricken or what has to be done?

A The Judge has to sign a final judgment for possession.

Q Anything else?

A A writ of possession has to be issued by the Clerk.

Q Anything else?

A The sheriff has to have process.

Q I am talking about before you get to that point, and if the Judge has struck the defenses and entered a default, what else has to be done?

A Well, as I answered that before as best I could, if it is done by the Clerk, nothing else has to be done because the Clerk is just an administrator, and if it is done by the Judge, you have to remember that the Judge has such discretion when the case is in front of her, and she can do whatever she wants.

Q I'm not quarreling with the Judge here, and I understand that.

A No.

MR. GOMEZ: That is all I have. Thank you, Judge.

We have a witness fee question.

THE WITNESS: Do you want that admitted as a Plaintiff's Exhibit?

MS. JOYCE: I think that we are up to 5, Judge.

THE COURT: 5?

MR. GOMEZ: You rest, I take it?

MS. JOYCE: Yes.

MR. GOMEZ: We have one witness, for the fees.

THE COURT: Proceed.

MR. GOMEZ: Mr. Palgon, would you mind switching seats with this gentleman?

MR. PALGON: I haven't been sworn in yet, Judge.

THE COURT: Please raise your right hand and be sworn.

Thereupon: David Palgon was called as a witness by the Defendant, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOMEZ:

Q Please state your name and address.

A David J. Palcon, 1266 West Flagler Street, Miami, Florida 33135.

Q What is your profession?

A I am a practicing attorney in the state of Florida.

Q For how long?

A Since 1963.

Q You graduated from where?

A The University of Florida.

Q Sir, your practice is involved with what?

A General corporations, landlord/tenant, wills.

Q Have you had occasion to represent both tenants and landlords in legal proceedings?

A Yes, both and evictions.

Q You have not had an opportunity Ms. Joyce's file?

A No, I have not.

Q I have told you a little bit about the case before you showed up here today.

A Yes, you have.

Q With regard to a landlord/tenant eviction uncontested which this was, not a contested landlord/tenant eviction, what is the customary fee in this county for such an action?

A About $250.

Q In a contested landlord/tenant action which this was, what is the customary and reasonable fee?

A They generally set them for 15 minutes, and I notice that this hearing was set for 15 minutes, and I would say that a customary fee would be approximately $500.

Q And, the fact that someone may not question their accuracy but represent certain amounts of hours which are put in a case, does that necessarily mean that that was the amount of hours required in a case?

A No, of course not.

MR. GOMEZ: That is all of the questions I have.

MS. JOYCE: I have no questions of Mr. Palgon, Judge.

THE COURT: Have both sides concluded with eviction and possession?

MS. JOYCE: We have. I have a proposed final judgement here that provides for—

THE COURT: Is there any argument?

MS. JOYCE: Let me show it to the other side. I am sorry, and I will show you a prepared form for final judgment, and here is the original, and I have given them one of the conformed copies to take a look at.

THE COURT: This particular duplex or apartment known as 901—

MS. JOYCE: Excuse me, Your Honor.

THE COURT: This particular apartment known as 901—

MS. JOYCE: That was a computer allocation for it, and it has no apartment number.

It is a duplex, and each one has a separate one, 15461 Durnford Drive has no apartment number.

THE COURT: 15461 Durnford Drive? 901 is simply a bookkeeping number, is that right?

MS. VOS: Yes.

THE COURT: Counsel, do you have any objection to any of the cost items?

MR. GOMEZ: Yes, we do, as a matter of fact.

MR. EDELSTEIN: Yes, Judge, I believe that under the Supreme Court guidelines for taxing cost, they are entitled to the costs for the original copies of the depositions and not for the copies themselves, only the originals and—

THE COURT: Do you have bills from those?

MS. JOYCE: I do, Your Honor, and they are in those other bills at the bottom of them where it says—look on the first page there, it says, "filing fee and service paid."

THE COURT: Well, we will talk about transcripts.

MS. JOYCE: Included in there also we paid for it at our office and then billed our clients there, and you can go to the bottom of that one.

MR. EDELSTEIN: Judge, the—

MR. GOMEZ: That is one of our copies.

MS. JOYCE: Those are their copies.

MR. GOMEZ: You don't get copies of depositions.

MR. EDELSTEIN: In addition, Judge, none of the depositions were used at any time, so I think that that is a further requirement of the Supreme Court.

THE COURT: Did these depositions have to do with the counterclaim as well as the possession?

MR. EDELSTEIN: Yes, Judge, in fact, a large portion of it.

MR. GOMEZ: The depositions, we took.

MS. JOYCE: They were taken before their answer or counterclaim was filed.

MR. GOMEZ: The depositions were taken and there may be some overlapping to be honest.

THE COURT: What are these for, copies of depositions that you took?

MR. EDELSTEIN: We took.

MS. JOYCE: One of them is for an attendance where it says, "Friedman and Lombardi and Matz, Traktman, and they were there and in Friedman and Lombardi we did pay for them to come.

MR. GOMEZ: That is like a $40 appearance fee, but again, I don't think that it has been used in these proceedings, and it is stretching it out if we took a deposition of Mr. Karsteter.

THE COURT: You don't have a statement from the court reporter, do you?

MS. JOYCE: I do, with the client's bill, and I will show it to you.

THE COURT: Please let me see what it is, and if we can—

MS. JOYCE: They are color-coded.

THE COURT: We will provide it if it is necessary and allocate it.

MS. JOYCE: Here are the two bills.

THE COURT: Show them to counsel.

MR. GOMEZ: These are all copies.

MS. JOYCE: They are attendances from Friedman and Lombardi.

MR. GOMEZ: This is for a hearing.

MS. JOYCE: Right, and attendance at a hearing.

MR. GOMEZ: I don't think that you get copies of transcripts of motions, hearings, or which that was done under the Florida Supreme Court.

MS. JOYCE: We needed it for the same reason that Judge Simms was gone, and we had to have established what the Judge did.

MR. GOMEZ: We ordered that, and that is a copy that you had.

We ordered the original and paid for—

MS. JOYCE: Just the attendance.

MR. GOMEZ: That was $45, and you can knock out the rest.

That is the only one we are talking about.

MR. EDELSTEIN: That is $384, that item, 3C, but that was $209 there.

MR. GOMEZ: $45 of that and the rest comes out.

MR. EDELSTEIN: That is the attendance of the court reporter and the transcript of the hearing.

THE COURT: $384.55, and then this is $209.10?

MR. GOMEZ: Those are all copies, Judge.

MR. EDELSTEIN: That is $384.55 which is all copies.

MR. GOMEZ: I don't think that these should be accessible under the rule.

MR. EDELSTEIN: And, I think—

THE COURT: We have $14.50 for a Clerk's fee.

MR. GOMEZ: That is proper.

THE COURT: $34.00 is for the sheriff or process server.

MR. EDELSTEIN: We have no problem with that.

THE COURT: $380.55, and you object to that total; is that right?

MR. GOMEZ: Copies of deposition that we took, and I believe we ordered the transcript of, and they were not used.

MS. JOYCE: We needed them to prepare.

MR. GOMEZ: The Supreme Court is specific that you don't get that.

THE COURT: Well, I am not familiar with that particular rule.

MR. GOMEZ: There is a case decision that spells it out, and I will represent that to the Court that you do not get copies of depositions.

THE COURT: Well, I—

MR. GOMEZ: Now this is going to be assessed against both Defendants, I assume, Miami Lakes Inn also?

MS. JOYCE: Yes.

MR. GOMEZ: Are they stipulating to all of the costs or what are they doing?

THE COURT: Here is a $45 fee for an attendance on July 18.

MR. EDELSTEIN: That is a item there on the list.

MR. GOMEZ: We may be spinning our wheels if Miami Lakes Inn is agreeing to pay the costs.

MS. JOYCE: They have not.

MR. GOMEZ: I thought that they might not.

THE COURT: $384.55, and we only have a bill here for $209 which appears to be for a copy of that, right?

MR. EDELSTEIN: Judge, while she is looking—

THE COURT: Can someone find that ruling with which I am not familiar?

MR. EDELSTEIN: I would say that it is a series of guidelines that was prepared by the Supreme Court.

THE COURT: I'm not saying that they aren't, but I haven't studied them in detail.

MR. GOMEZ: I will submit it to you so that you can have it for your file. I didn't bring it with me.

THE COURT: I have law books, but I haven't had time to read them all since they were in the guidelines, and I haven't had an occasion to read them yet.

MR. GOMEZ: I will mail it out for you this afternoon if you would like, Your Honor.

THE COURT: Then there is an attendance fee on June 26th and a transcript.

MR. EDELSTEIN: That is the other half of this.

This is a $45 attendance fee, and we don't have any objection to having Chris Karsteter on that bill here.

THE COURT: June 26th.

MR. EDELSTEIN: Correct.

MR. GOMEZ: Because at that point, the severance has been decided, so in all fairness that should go—

THE COURT: Is there any objection to the document being photocopied?

MR. EDELSTEIN: We don't know what it is.

MS. JOYCE: The document if it is photocopied, we don't have to worry about it.

THE COURT: Costs of $14.50 from the Clerk, $34 for the sheriff, $45 attendance fee for the reporter on July 28, and $45 for attendance of reporter on June 26th.

Is there any further discussion of the costs?

MS. JOYCE: No, Your Honor.

THE COURT: It seems to be $1,555.50 if I have added it correctly and if I haven't, you may add it again.

These two will be kept for the record, and these invoices, and the other one is returned to you, and as to the attorney's fees, is there any argument on that?

MS. JOYCE: There is no further comment from our side, Judge.

THE COURT: There is a counterclaim and crossclaim involved in this which is interwoven in the services performed in relation to the possessory action.

MS. JOYCE: I have segregated them out, Your Honor, and I have penciled in just one hour on there, and that is my second bill, and I have segregated that out.

THE COURT: Well, I think that is not enough segregation.

MR. GOMEZ: They did a good job of getting several hours worth of work here while we are trying to keep it—

THE COURT: I am going to allow $2,500 representing the attorney's fees and possessory action only, and that would not preclude you from asking for attorney's fees in the trial and counterclaim and crossclaim.

MR. GOMEZ: Each of us has this in the next—

MS. JOYCE: Thank you, Judge.

THE COURT: This judgment here appears to be only against Defendant Karsteter, and that should be also charged to Miami Lakes Inn.

MS. JOYCE: Paragraph one seems to be all right. I have Miami Lakes Inn in here and in paragraph—

THE COURT: What are you talking about?

MS. JOYCE: Paragraph two, and it is at the bottom line there where we interlineated after the Defendant Karsteter, and this is the very last line, and the Defendant, Miami Lakes is delineated after Chris Karsteter.

MR. GOMEZ: We will amend our pleading and seek a crossclaim or in the case of attorney's fees—

MS. JOYCE: Here is something that—may I mention before you finish that, and while you are doing that, the Defendant, Miami Lakes Inn, generated none of these attorney's fees.

It filed an answer stipulating to the judgment, and we think that it is really appropriate to have a judgment against Karsteter on that.

THE COURT: Well, they have counterclaims and crossclaims involved, so that can be settled then.

Miami Lakes Inn, Athletic Club, and Golf Resort is that the full name?

MS. JOYCE: This is it, Judge.

THE COURT: I am at the bottom line of the first page, too, and I will add Miami Lakes Inn, Athletic Club, and Golf Resort.

On the second page I will add after Chris Karsteter on the second page, Miami Lakes Inn Athletic Club, and Golf Resort, and I think that I will have copies made since there are other delineations.

Let's go off the record a minute.

(Thereupon, there was a discussion off the record, after which the following proceedings were had:)

MS. JOYCE: We just have one motion and that is to ask you to set a supersedeas, and that is the last thing that we are requesting.

Counsel, our client is just asking later on if he could do a substitution of the exhibits to get their original ledgers back, and I told them that later on we would approach the Court about substituting copies.

MR. GOMEZ: I have no objection.

MR. EDELSTEIN: I have no objection, Judge.

THE COURT: Plaintiff may withdraw the exhibits, the original exhibits.

MR. EDELSTEIN: I ask that if they do that if they could provide us with copies.

THE COURT: Substitute copies and furnish copies to the defense counsel, and that is so noted.

MR. EDELSTEIN: Judge, perhaps I can save some time for the Court.

We have two other matters scheduled, and we had a motion to stay proceedings pending an appeal, and counsel has indicated that they were going to request a supersedeas bond prior to the hearing today, and I didn't discuss this aspect with Mr. Karsteter, and frankly, Your Honor, he is not in a position to post a supersedeas bond, and as a consequence we are in a position where we realize that in a motion to stay proceedings that a supersedeas bond would be appropriate, and Mr. Karsteter as condition will be vacating the premises over objection, and he feels that he is fully entitled to remain there rent-free.

However, he will be vacating the premises probably within a week's time or even quicker if he can, so to that extent, our motion to stay proceedings is probably moot as would be the motion to require a supersedeas bond if the Court wants to set a time frame requiring him to vacate the premises within a certain period of time or that he post a supersedeas bond, we don't have any objection to that under those circumstances, but we will represent to the Court that he will be vacating the premises this week.

MS. JOYCE: Your Honor, respectfully, the Court does have the authority to grant here, because of the Defendant's assurity of possession that he has already claimed, and Plaintiff intends to witness the Court's

discretion to give them time, and we appreciate counsel advising the Court that he is withdrawing his motion for stay, and we will withdraw our requirement for the posting of the supersedeas.

MR. EDELSTEIN: Judge, we would like to clarify—

THE COURT: The motion is stayed until October 15th, 1986.

MS. JOYCE: Your Honor, that being the case, we think that it is appropriate that they post some supersedeas bond in connection—

THE COURT: Not until after the motion of notice of appeal is filed.

MS. JOYCE: Fine, then if I understand it right, the Court—

THE COURT: The writ of possession is not always issued forthwith. It doesn't require it.

MS. JOYCE: This is something that at least we feel is something that the Plaintiff gives an extension of time, but respectfully, we sort of felt that the Court either should grant a possession of the Plaintiff and the Defendant and then it was up to the prevailing parties, namely the Plaintiff to give a designated time and exchange for possibly some compensation and we didn't really feel that it was up to the Court.

MR. GOMEZ: Is there some time where we can get—

MS. JOYCE: How about this weekend? Can we stipulate?

MR. GOMEZ: Fine.

MS. JOYCE: I will be out this weekend, and we can stipulate to it on Monday.

MR. GOMEZ: Give him until the 15th, and we will be out before then, and I represent that to you.

Thank you, Judge.

MR. EDELSTEIN: Judge—

THE COURT: Here are copies of the final judgment entered, and the writ of possession will not be issued until August 15.

MR. EDELSTEIN: Judge, here again, so the record is clear, we didn't actually withdraw our motion.

We were placed in a position where we were forced to because of Mr. Karsteter's failure to comply with the necessity of filing the supersedeas bond.

THE COURT: Give that to the Clerk because as to attorney's fees costs, should an appeal be taken as to those two items, then it would seem the supersedeas bond would be in order or the amount provided by Statute which, as I recall, is the amount plus 15 percent.

MR. EDELSTEIN: It has been increased slightly over that, Judge.

MR. GOMEZ: Now it is doubled.

THE COURT: It has changed, and I will look at the new Statute.

MR. GOMEZ: It is a little higher now, but we will comply with it.

THE COURT: They change them so often that I can't keep up with all of them.

(Thereupon, the hearing was concluded.)

CERTIFICATE

STATE OF FLORIDA)
COUNTY OF DADE) ss.

I, JAN WILLITZ, Court Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I was authorized to report the proceedings had before The Honorable Mattie Belle Davis, County Court Judge, held on August 4, 1986; that the within transcript, pages 1 through 74, represents an accurate record of my shorthand notes taken at that time.

DATED at Miami, Florida, this 25th day of November, 1986.

/s/ Jan Willitz
JAN WILLITZ

APPENDIX M

[FILED AUG 4 1986]

IN THE COUNTY COURT
IN AND FOR DADE COUNTY, FLORIDA

CASE NO. 86-3797 CC

SECTION NO. 23

CIVIL DIVISION

Elizabeth Joyce

PLAINTIFF

PLAINTIFF ATTORNEY

vs.

Chris Karsteter

DEFENDANT

Steven Edelstein & Roland Gomez for Chris Karsteter

DEFENDANT ATTORNEY(S)

DATE OF HEARING 8-4-86

TYPE OF HEARING Trial 1:45
15 Min

MOTIONS

TYPE OF MOTION D's to stay proceedings granted until August 15, 1986 for Writ of possession & P's motion to fix supersedes bond Deferred pending filing of Notice of Appeal

CALENDAR DIRECTIONS

SPECIAL SETTING INSTRUCTIONS P may withdraw original Exhibits & substitute copies & furnish copies to D's counsel [MBD]

DISPOSITION

FINAL JUDGMENT for removal V, both Defts—

AMOUNT OF JUDGMENT ATTORNEY FEES $2500.—
COURT COSTS $155.50
Find Judgment for removal signed 8-4-86—& copies to counsel

CONDITION OF DISPOSITION

SWORN TESTIMONY TAKEN IN COURT: Reporter was present

/s/ MATTIE BELLE DAVIS
JUDGE

IN THE COUNTY COURT,
IN AND FOR DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 86-3797 CC 23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN and COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

FINAL JUDGMENT

THIS CAUSE came on to be heard before the Court upon the Plaintiff's Complaint for Removal of Tenant, and the Court having entered Default against Defendant, CHRIS KARSTETER, on July 22, 1986, and it appearing that Defendant, MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., filed an Answer herein admitting all of the allegations of Plaintiff's Complaint and filed a Stipulation for Judgment, and the Court having heard argument of Counsel and testimony of witnesses, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. That a Final Judgment be, and it is hereby, entered in favor of Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, and against Defendant, CHRIS KARSTETER, and Defendant, MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., for possession of the premises located at and

known as 15461 Durnford Drive, Miami Lakes, Dade County, Florida, for which let Writ of Possession issue.

2. That a Final Judgment be, and it is hereby, entered in favor of Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, and against Defendants, CHRIS KARSTETER, and Miami Lakes Inn, Athletic Club, and Golf Resort, Inc. [MBD] for attorney's fees and costs, and that Plaintiff, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION have and recover from Defendants, CHRIS KARSTETER, and Miami Lakes Inn, Athletic Club,. a Golf Resort, Inc. [MBD] the sum of $2500.00, representing attorney's fees and the sum of $155.50, representing costs, for which let execution issue.

DONE AND ORDERED at North Miami Beach, Dade County, Florida, this 4 day of August, 1986.

/s/ MATTIE BELLE DAVIS
County Court Judge

Conformed copies furnished to:

WISEHEART & JOYCE, P.A.
Attorneys for Plaintiff/Counter-defendant

RESS, GOMEZ, ROSENBERG, HOWLAND & MINTZ, P.A.
Attorneys for Defendant/Counter-plaintiff/ Cross-plaintiff, Chris Karsteter

GREENBERG, TRAURIG, ASKEW, HOFFMAN, LIPOFF, ROSEN & QUENTEL, P.A.
Attorneys for Defendant/Cross-defendant, Miami Lakes Inn, Athletic Club and Golf Resort, Inc.

APPENDIX N

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA.

CIVIL DIVISION

CASE NO. 86-3797 CC23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION,
a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB, AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER, et al.,

Defendants.

North Miami, Florida

June 17, 1986

3:25 o'clock p.m.

DEPOSITION

OF

CHRIS KARSTETER

APPEARANCES:

WISEHEART AND JOYCE, P.A.
BY: ELIZABETH W. JOYCE, ESQUIRE, on behalf of the Plaintiff.

RESS, GOMEZ, ROSENBERG, HOWLAND & MINTZ, P.A.
BY: ROLAND GOMEZ, ESQUIRE, on behalf of the Defendants.

INDEX
EXHIBITS

PLAINTIFFS'		FOR IDENTIFICATION
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No. 2	Document	13

Deposition of CHRIS KARSTETER, taken by the Plaintiff for the purpose of discovery and for use as evidence in the above styled cause, wherein The Graham Companies, f/k/a The Sengra Corporation, a Florida corporation is the Plaintiff and Miami Lakes Inn, Athletic Club and Golf Resort, Inc., f/k/a Miami Lakes Inn and Country Club, a Florida corporation, et al. are the Defendants, pending in the County Court in and for Dade County, Florida pursuant to notice heretofore filed, before ELLIS TREMPER, a Notary Public in and for the State of Florida at Large, at 1700 Sans Souci Boulevard, North Miami, Florida, on the 17th day of June, 1986.

Thereupon:

CHRIS KARSTETER

a witness named in the notice heretofore filed, called by the Plaintiff, was first duly sworn in the above cause, and testified under oath as follows:

DIRECT EXAMINATION

BY MS. JOYCE:

Q Mr. Karsteter, state your full name.

A Christopher Campbell Karsteter.

Q What is your address?

A 15461 Durnford Drive, Miami Lakes, Florida.

Q Have you been employed by Miami Lakes Inn or what is the full name—Athletic Club and Golf Resort, Inc.?

A Yes.

Q How long have you been employed by Miami Lakes, for short?

A Just over 18 months.

Q When did you first become employed by Miami Lakes?

A In October of '84.

Q When you first came to work, in October of '84, what employment agreement did you have with Miami Lakes?

A I had an agreement based upon the terms of employment outlined in a letter, which I believe you have a copy of, sent to me by Mr. Younts.

Q I am going to show you what I think was admitted for, marked for Identification as Exhibit 4, I think, a letter of August 20th, '84.

Does that look like what you referred to as your employment agreement?

A Yes, it does.

Q Were there any other employment contracts, signed documents relating to employment?

A Not to my knowledge, no.

Q What was your understanding concerning housing in connection with your employment?

A That Miami Lakes, at that time it was the Inn and Country Club, would provide free houses for me.

Q If you would—I think you have the copy there—turn over to the second page—no, on the first page under three, titled Housing.

Is this the source of your understanding?

Let me start at the paragraph: Per our conversation yesterday, the terms of employment are as follows: Item number one relates to salary; two, profit sharing; and three, is housing.

Is this the source of your understanding about the housing that would be provided in connection with your employment?

A Yes. In the oral manner in which it was presented. As it states here $37,500 per year and I was led to believe the housing was per year also, as far as that goes.

Q So in addition to what we will call this, the employment agreement, in addition to this employment agreement which provides for housing as part of the terms of employment, I believe you said there was an oral understanding?

A Yes.

Q An oral agreement?

A Yes.

Q Tell me, if you would, what was your recollection of the oral understanding with respect to housing while you were employed?

A That they would provide $37,500 base income for me and, also, per annum and also providing housing per annum as well.

Q When you say "per annum", what exactly do you mean they were going to provide?

A I don't remember exactly the exact way it was put. I remember my overall understanding of our agreement.

Q And you say you had this oral understanding that they were going to provide you a job and your salary was going to be 37,500?

A Yes.

Q And they were going to provide the housing. Do you remember with whom you had this oral understanding?

A With David Younts.

Q Do you remember when this took place?

A The initial agreement took place when I flew down here in August of '84. There was another conversation in December of '85; I don't remember exactly when. It was when he presented a portion of my profit sharing check to me, which is standard. They present about 20 percent of the total profit sharing amount in December; the rest would be received in, I believe the first day of August or last day of July. And when he did that we—he mentioned also about the housing because I was concerned about that because my father was terminally ill and he wanted to move down and be close to us. Based on that understanding, I put a deposit down on a condominium in Celebration Point for my father to move to, so he could be close to us.

Q I'm sorry about your father and I am glad you were able—

A They have since been cancelled.

Q I hope because he's improved.

A No.

Q I'm so sorry.

Did you understand—was it your understanding that you would be allowed to live in this duplex—right?

A Duplex, yes.

Q Was it your understanding that you were to live in the duplex while you were employed there, but if you were terminated you would have to give up the duplex?

A I didn't have an understanding as such, because I was led to believe that the term of my employment was going from year-to-year on a per annum basis.

Q But—

A It was never mentioned anything about my—the possibility of me being terminated.

Q There wasn't any agreement: we can terminated you at the end of a year—

MR. GOMEZ: That's been asked and answered.

BY MS. JOYCE:

Q I am going to show you something else that was introduced, I think as Exhibit No. 1 attached to the Complaint and it's been marked for Identification No. 1 and it appears to be a lease agreement. And I will ask you if you can identify that?

A How do you want me to identify this particular document?

Q Do you recognize it? And tell us, if you would, whether that is the lease agreement that relates to your apartment or your duplex.

MR. GOMEZ: Excuse me. That is the lease agreement that was served on him. I think he can identify it in that fashion. He never signed it.

THE WITNESS: This is—

BY MS. JOYCE:

Q Is this a copy of the one that was served on you?

A Yes, I believe.

MR. GOMEZ: Does that have one side?

THE WITNESS: This has one side. She's attached this. I think this is a copy. The first page of this two-page document is a copy of what was served on me. It did not have this second page which is attached to it, I believe, from my memory.

BY MS. JOYCE:

Q And do you see on there that it relates to—it is the lease that relates to the premises in which you currently reside?

A Yes.

Q On there a rent, monthly rent is specified in the amount of—

A $730 on this.

Q —730. Since you began your employment in 1984, have you paid any rent to Miami Lakes, your employer?

A No, I haven't.

Q Were you shown this agreement by your employer at any time?

A No, not to the best of my memory. No.

MR. GOMEZ: Prior to being served with it.

MS. JOYCE: Fine, that is good.

BY MS. JOYCE:

Q Did there come a time then when you were discharged from employment?

A Yes.

Q When was that?

A April 21, 1986.

Q How were you notified? Was it oral or written?

A It was oral.

Q Did you say April 25th?

A April 21st.

Q Who was it that notified you of your discharge?

A David Younts.

Q At the time that he told you that your employment was terminated, did he tell you that your employer would expect you to be moving out of the duplex?

A He mentioned something along those lines. I can't remember how it was worded, because I was not in the best of moods or frame of mind to comprehend all the intricacies of the termination.

Q I appreciate that.

Do you have any recollection, though, whether he asked you to move right away or did he offer you: Listen, if you want to stay and pay rent, you may?

A He said something along those lines. I don't remember exactly what he said.

Q After you had this conversation with Mr. Younts in which he told you your employment was terminated, did you receive any further communication from your former employer concerning giving up your duplex?

MR. GOMEZ: The three-day notice?

MS. JOYCE: No. Let me go on.

BY MS. JOYCE:

Q You don't recall?

A I don't remember offhand. If you have something that would refresh my memory—

Q I have here a copy of a memorandum dated May the 7th and I want to ask you if you remember getting this little memo?

MR. GOMEZ: May I see it before he answers?

MS. JOYCE: I'm sorry.

BY MS. JOYCE:

Q Do you remember getting this memo from, I think it's signed by John Halley.

A Offhand, I don't remember right now.

Q Just to refresh your recollection, this memo says that: I have been advised by David Younts that they are covering your rent on your duplex thru May. Please advise me as soon as possible as to whether or not you plan on continuing occupancy after May 31. Please note rent on the unit is 740 and security is 1100.

After you were terminated, did it occur to you to approach them about staying on and paying rent?

A No. Because, again, on my rental agreement had been that, what I was led to believe was that my term of employment went from year-to-year. And if I would have been able to obtain another job or whatever, then perhaps I might have viewed that differently.

As far as I was concerned, I could stay there until the end of September.

Q Let me say, let me clarify that. I understand your position.

Was it your understanding that when you took this job, they couldn't terminate you except for on a year? They couldn't terminate you during a year and nor would you have to move out?

A My understanding, when I took the job, was that I didn't, to be honest with you, I didn't think that much about being terminated from the job. It wasn't something—I was trying to concentrate—I was trying to concentrate my effort in a more positive direction.

Q After you were terminated, did you take up Mr. Halley and offer to pay any rent?

A No.

Q There was an Exhibit No.—I don't believe it's marked yet.

I want to show you what purports to be a three-day notice that was attached to the Complaint and I will ask you if you recognize this? Do you remember receiving this three-day notice?

A Yes.

Q What, if anything, did you do after you received the three-day notice?

A I believe I contacted my attorney at that point.

Q And, then, during the three days, did you pay or try to pay the monthly, full amount of the monthly rent to your former employer?

MR. GOMEZ: We will stipulate he made no payments on rent and didn't offer to make payments on rent because it is his position that he doesn't owe any rent.

THE WITNESS: Yes, I agree with that.

BY MS. JOYCE:

Q Mr. Karsteter, right now what is your desire concerning the occupancy of the duplex?

MR. GOMEZ: His desire—I can tell you our legal position. It's that he is entitled to maintain occupancy through the end of September '86, based on the testimony he's given to you so far.

MS. JOYCE: I see. Very good.

BY MS. JOYCE:

Q Under the position that your counsel has stated, do you feel that you have any obligation to pay rent during this time?

A No.

MS. JOYCE: Let me have a minute. I have no further questions.

MR. GOMEZ: We waive.

(Reading, signing and notice of filing were duly waived.)
(Plaintiff's Exhibits Nos. 1 and 2 were marked.)
(Deposition was concluded at 3:40 o'clock p.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

) SS.

COUNTY OF BROWARD)

I, ELLIS TREMPER, a Registered Professional Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I reported the deposition of CHRIS KARSTETER, a witness called by the Plaintiff in the above-styled cause; that the witness was first duly sworn by me; that the foregoing pages, numbered from 1 to 14, inclusive, constitute a true record of the deposition of said witness.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

WITNESS my hand and official seals in the City of Miami, County of Dade, State of Florida, this 26th day of June, 1986.

/s/ Ellis Tremper

Registered Professional Reporter
and
Notary Public, State of Florida
at Large.
My Commission expires:
January 23, 1990.

APPENDIX O

IN THE COUNTY COURT IN AND FOR
DADE COUNTY, FLORIDA.

CIVIL DIVISION

CASE NO. 86-3797 (CC-23)

THE GRAHAM COMPANIES, f/k/a
THE SENGRA CORPORATION, etc.,

Plaintiffs,

vs.

MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC., f/k/a MIAMI LAKES INN AND COUNTRY CLUB, etc., et al.,

Defendants.

North Miami, Florida
June 24, 1986
2:15 o'clock p.m.

DEPOSITION
OF
ED FEATHERS

APPEARANCES:

WISEHEART AND JOYCE, P.A.,
BY: ELIZABETH W. JOYCE, ESQUIRE,
on behalf of the Plaintiff.

RESS, GOMEZ, ROSENBERG & HOWLAND, P.A.,
BY: ROLAND GOMEZ, ESQUIRE,
on behalf of Defendant Karsteter.

GREENBERG, TRAURIG, ASKEW, HOFFMAN, LIPOFF, ROSEN & QUENTEL, P.A.,
BY: MARIANNE A. VOS, ESQUIRE,
on behalf of Defendant, Miami Lakes.

EXHIBITS

DEFENDANT KARSTETER'S		FOR IDENTIFICATION
No. 1	Personnel file	29

CERTIFIED QUESTIONS

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12	2
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Deposition of EDWIN E. FEATHERS, JR., taken by the Defendant Karsteter for the purpose of discovery and for use as evidence in the above-styled cause, wherein The Graham Companies, f/k/a The Sengra Corporation, etc., are the Plaintiffs and Miami Lakes Inn, Athletic Club and Golf Resort, Inc., f/k/a Miami Lakes Inn and Country Club, etc., et al. are the Defendants, pending in the County Court in and for Dade County, Florida, pursuant to notice heretofore filed, before ELLIS TREMPER, a Notary Public in and for the State of Florida at Large, at 1700 Sans Souci Boulevard, North Miami, Florida, on the 24th day of June, 1986.

EDWIN E. FEATHERS, JR.

a witness named in the notice heretofore filed, called by the Defendant Karsteter, was first duly sworn in the above cause, and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. GOMEZ:

Q Please state your name and address.

A Edwin E. Feathers; 7008 Lock Isle Drive North, Miami Lakes.

Q And your employment?

A Graham Companies; I'm the Treasurer.

Q How long have you been so employed?

A Seventeen years.

Q Trying to unravel, at least for my understanding, the corporate structure. Graham Companies is a new name as a corporation?

A That is correct.

Q When did that come into being?

A June 1st, 1985.

Q Do you have any documents listing the corporate structure of Graham Companies, Miami Lakes Inn, Athletic Club and Golf Resort, Inc., Miami Lakes Inn and Country Club?

A No.

Q Who would have those?

A I have them in my office.

Q You were supposed to bring those today. You didn't know you were supposed to bring those today, so we could figure this out a little bit; I assume you didn't know that?

MS. JOYCE: I didn't know either. I was reading the subpoena. I believe those were not requested. You asked the person who knew about it.

MR. GOMEZ: You and I talked and maybe it was my miscommunication.

BY MR. GOMEZ:

Q Well, let's try and figure it out maybe from your personal knowledge.

Miami Lakes Inn, Athletic Club and Golf Resort, Inc., when did that come into being?

A August 1985. I'm sorry, I believe it was April of '86 was the effective date of the name change.

Q Miami Lakes Inn and Country Club, a Florida Corporation, the Miami Lakes Inn and Country Club, ever been a Florida corporation?

A Yes.

Q When did that come into being?

A 1963.

Q Is the Miami Lakes Inn and Country Club, a Florida corporation, still in existence?

A Let me correct myself. The correct title of the company is Miami Country Club, Incorporated; that is the correct title of the corporation.

Q Okay. That's the one that came into being in 1963?

A Incorporated in 1963.

Q Has there ever been a corporation titled Miami Lakes Inn and Country Club, to your knowledge?

A No.

Q Any designation of Miami Lakes Inn and Country Club, a Florida corporation, is incorrect?

A Yes.

Q Has the Miami Lakes Inn and Country Club ever been registered as a fictitious name?

A That, I don't know.

Q Miami Lakes Properties, Incorporated, is that a separate company?

A Yes.

Q Is that the right title? I am messing them up.

A Yes.

Q When did that come into being?

A Early 1960's.

Q The property we are talking about, which is a duplex, 15461 Durnford Drive, who owns that property?

A The Graham Companies.

Q By deed, lease or, do you know?

A By deed.

Q Is Miami Lakes Properties, Incorporated, a wholly owned subsidiary of The Graham Companies?

A Miami Lakes Properties, Inc. is a wholly owned subsidiary of The Graham Companies.

Q Is Miami Lakes Inn, Athletic Club and Golf Resort, Inc. a wholly owned-subsidiary of The Graham Companies?

A Yes.

Q What was the 1963 entity?

A Miami Lakes Country Club, Inc.

Q Is that a wholly owned subsidiary of The Graham Companies?

A It was.

Q Is The Graham Companies a holding company for the subsidiary corporations underneath it that operate the development?

A I'm not sure what you mean by holding company.

Q I'm not either.

Miami Lakes Properties, Inc., do they own any property?

A No.

Q They just manage companies, properties of the Graham Companies?

A Miami Lakes Properties is the registered real estate broker and a wholly owned subsidiary of The Graham Companies.

Q Are you the Treasurer for all the companies?

A No.

Q Is there a separate Treasurer for Miami Lakes Inn, Athletic Club and Golf Resort, Inc.?

A I'm the Treasurer for the Miami Lakes Inn, Athletic Club and Golf Resort, Inc.

Q Are you the Treasurer for The Graham Companies?

A Yes.

Q Is the operation of these two companies basically interchangable, pretty much the same folks involved with them?

A Yes.

Q Do you know Chris Karsteter?

A Yes.

Q Who was he employed by?

A Miami Lakes Inn, Athletic Club and Golf Resort.

Q Incorporated?

A Incorporated.

Q When did that come into being?

A October 1984.

Q When was he employed?

A October '84.

Q He was like one of the first employees?

A I don't know.

Q Who paid his salary?

A Let's see. The Graham Companies.

Q Was he issued any credit cards?

A I don't know.

Q Have you ever seen those before?

A No.

Q Take a look at them. Are those the type of credit cards utilized by the corporate business entities at Miami Lakes?

A Yes.

Q I note that these are three credit cards, for identification, one is an American Express card, 378290975082349. It's a credit card issued to C. Karsteter on behalf of The Graham Companies. Av-Med health card issued by The Sengra Corporation and an AT&T credit card number 30582111503351 issued to Miami Lakes Inn and Country Club, Inc.

MS. JOYCE: I object to this line of questioning because the employee's credit cards really aren't relevant to the issue of his entitlement to possession of the premises.

I will instruct the witness not to answer that.

MR. GOMEZ: I didn't ask the question yet. You want to presume what I am going to ask?

MS. JOYCE: You can ask it. I think you asked him if he recognized those and you went on to describe them.

MR. GOMEZ: That is all I have done is describe them.

BY MR. GOMEZ:

Q What I have laid in front of you and described, is this an ordinary course of events due to what you have indicated the overlap between the various companies that an employee out in Miami Lakes would be paid his salary, perhaps by The Graham Company, have credit cards issued on the other companies?

MS. JOYCE: I instruct the witness not to answer.

MR. GOMEZ: Certify that.

BY MR. GOMEZ:

Q Without having the documents in front of you, are you able to tell us from your memory as to who the various officers are of the different corporations?

A I'd prefer to look at the documents to make sure I have everybody.

Q With that proviso and giving you an opportunity after we finish today to perhaps supplement, would you mind doing it, to the best of your ability?

A No.

Q Sengra is no longer in existence, it's replaced by Graham Company?

A The Graham Companies.

Q Could you give me the officers of The Graham Companies?

A May I look at the records?

Q Sure. I didn't think you had any.

A William A. Graham, Chairman of the Board.

Q Could I interrupt you. Is that something that we could make a copy of and save time; or is that something you would rather not do?

A I would rather respond to your particular question.

Q If it has everybody listed that would be easy.

A They're all by initials.

Q All right.

A William A. Graham, Chairman of the Board. President is Robert L. R-a-w-l-s. Executive Vice-President, William E. Graham. Senior Vice-President Wallace L. Lewis, Vice-President Carol G. Wyllie, W-y-l-l-i-e.

Q Is Carol Wyllie a Graham?

A Yes.

Q That is her married name?

A That is correct.

Q Billie Ann Murphy, Alfred J-e-w-e-t-t, Edwin E. Feathers, Secretary and Treasurer. Those are the officers of The Graham Companies.

The officers of the Miami Lakes Inn, Athletic Club and Golf Resort, Inc.: William A. Graham, Chairman; C. David Younts, President; Sandra G. Younts, Executive Vice-President.

Q Mrs. Younts is another Graham?

A That is correct.

Q Okay.

A Senior Vice-President, Robert L. Rawls; Vice-President Jerry B-r-o-z, he's now a vice-president. Secretary and Treasurer is Edwin E. Feathers.

Q Is Mr. Broz the individual who replaced Mr. Karsteter?

A I would rather not answer that.

Q But I rather you would.

MS. JOYCE: I don't think it is relevant, Counsel.

I instruct him to answer.

MR. GOMEZ: Certify it.

BY MR. GOMEZ:

Q Does that complete your corporations?

A That completes the names and titles of the corporate officers of The Graham Companies and Miami Lakes Inn.

Q How about the Miami Lakes Properties, Inc.?

MS. JOYCE: Objection. It is not relevant to the proceedings and I instruct him not to answer that.

MR. GOMEZ: I don't want to unnecessarily go to Court. As I recall, Mrs. Martinez is the one that signed this lease and I would think it is relevant.

MS. JOYCE: The officers and directors are available through the Secretary of State. It's a matter of public record. They can be gotten through other means. They're not a party to this case.

MR. GOMEZ: You're instructing him?

MS. JOYCE: Yes.

MR. GOMEZ: Certify that.

BY MR. GOMEZ:

Q What is Mrs. Beth Martinez' connection to The Graham Companies?

A Employee.

Q Do you know what her connection is to any wholly owned subsidiary of The Graham Companies?

A Yes.

Q What?

A She is an officer of Miami Lakes Properties.

Q Do you have the listing of the Board of Directors of those companies, The Graham Companies and the Miami Lakes Inn, Athletic Club and Golf Resort, Inc.?

A William A. Graham, William E. Graham, Patricia C. Graham, Robert L. Rawls, Gerald E. Toms, T-o-m-s, Michael B-i-e-b-e, Sandra G. Younts, William W. Graham, Carol G. Wyllie and the Directors of the Miami Lakes Inn, Athletic Club and Golf Resort, Inc.: William A. Graham, Sandra Younts, Robert L. Rawls, William E. Graham, Gerald E. Toms and C. David Younts.

Q As the Treasurer, do you pay the bills that come in? Are you in charge of that?

A Yes.

Q Legal bills?

A Yes.

Q One of the defendants in this action, it was a stipulation for entry of final judgment and an answer on behalf of the Miami Lakes Inn, Athletic Club and Golf Resort, Inc. against the Graham Companies and others, is represented by the firm of Greenberg, Traurig, Askew, Hoffman, Lipoff, Rosen & Quentel.

As Treasurer at Miami Lakes, have you paid legal bills on behalf of the Graham Companies to that law firm?

MS. JOYCE: Objection. This law firm is present.

MR. GOMEZ: They can speak for themselves.

BY MR. GOMEZ:

Q Go ahead.

A Yes.

Q Over what period of time has the Graham Companies had a business relationship with the law firm I have just mentioned?

MS. VOS: I object and instruct Mr. Feathers to not answer that question. This has no relevance in relationship between attorney and client and his knowledge as to the payment of any bills or as to that relationship.

MR. GOMEZ: You are instructing him not to answer?

MS. VOS: I have no authority; he is not my client.

MR. GOMEZ: I thought that's what you said.

BY MR. GOMEZ:

Q You can answer.

MS. JOYCE: I would renew my objection to this witness answering questions concerning Greenberg, Traurig. And, it is not relevant to these proceedings.

I instruct him not to answer.

MR. GOMEZ: Certify that.

BY MR. GOMEZ:

Q Is the Greenberg, Traurig firm presently representing the Graham Companies in any legal proceedings at this time?

A I don't know.

MS. VOS: Objection to that. This has no relevance to this issue.

We have a lawsuit pending for possession of premises. The plaintiff has counsel here. The defendant, Miami Lakes Inn and Country Club and Miami Lakes Inn, Athletic Club and Golf Resort has counsel here.

The relationship of The Graham Companies or the Miami Lakes Inn with any other law firm has nothing to do with this lawsuit.

MR. GOMEZ: Is it your position if you're representing The Graham Companies in other matters at this time, you're permitted to defend an action brought by them against a client?

MS. VOS: I am not stating any position.

BY MR. GOMEZ:

Q You can answer that.

A I don't know.

Q Do you know who is responsible for the payment of the legal bills of Greenberg, Traurig, et cetera, et cetera with regard to this litigation?

A No.

Q Has it ever been mentioned that they have been hired?

A Yes.

Q Did you know they were hired before you walked in here today?

A I'm not sure when you referred to hired, in what capacity?

A To be paid, do legal work.

Did you know they were going to be here before you walked in here today?

A No.

Q Did you know this young lady works for that law firm?

A Yes, I do.

Q Were you surprised when you came here today to discovery that you have an attorney representing the Graham Companies, and, sitting, in theory on the other side, defending on the other side, is the Greenberg, Traurig law firm?

MS. JOYCE: Objection.

MS. VOS: This is getting a little far afield. If you have some questions to ask this gentleman about this lawsuit, I would suggest that you do so.

Otherwise, we're going to be here all day asking questions that have nothing to do with the ownership, vacating of premises.

MS. JOYCE: I instruct the witness not to answer, concerning your last question.

MR. GOMEZ: You are instructing him not to answer questions pertaining to Greenberg, Traurig?

MS. JOYCE: To the representation in this case. They're not relevant to the action we have in front of us. And the parties are represented on record as to who the parties represent.

MR. GOMEZ: I want to make sure. You're objecting as to relevance and instructing him not to answer on the basis of relevance?

MS. JOYCE: Right.

MR. GOMEZ: Certify the question.

BY MR. GOMEZ:

Q Does The Graham Companies customarily pay the legal fees incurred by the wholly owned subsidiaries of The Graham Companies?

MS. VOS: I would object to this line of questioning. It is irrelevant and not going to lead to the discovery of admissible evidence in this case.

MS. JOYCE: Instruct the witness not to answer.

MR. GOMEZ: On what basis?

MS. JOYCE: Your line of inquiry on that specific question is not relevant to this action for eviction.

MR. GOMEZ: We certify.

For the record, I am inquiring in this line because it would appear that there is potential conflict. I want everybody to know where I'm coming from.

MS. JOYCE: We have addressed that. We don't feel it's relevant.

BY MR. GOMEZ:

Q Before you walked in here today, were you aware that the Greenberg, Traurig firm, on behalf of the Miami Lakes Inn, Athletic Club and Golf Resort, Inc. was going to file an answer admitting everything and filing a stipulation for the entry of final judgment in the lawsuit that had been instituted by The Graham Companies against the Miami Lakes Inn, Athletic Club and Golf Resort, Inc.; were you aware of that before you walked in here today?

A No.

Q Jumping back to the companies for a second. Would you know who the stockholders are of those companies?

A Yes.

Q Could you tell us?

MS. JOYCE: Would you repeat the question? I was being spoken to and didn't hear.

MR. GOMEZ: I am asking for a listing of the stockholders, without giving the interest.

MR. JOYCE: Of which corporation?

MR. GOMEZ: The two parties—The Graham Companies and Miami Lakes Inn, Athletic Club and Golf Resort.

MS. JOYCE: I object to that question on the grounds of relevancy. It's not relevant and not going to lead to admissible information.

Your question was asked as to the stockholders. We have provided the officers and directors. And the shareholders, you have been told, Miami Lakes Inn is a wholly owned subsidiary by the Graham Companies. But really the shareholders of The Graham Companies is jut not relevant.

So, my objection is in part, that you have been given the answers with respect to Miami Lakes Inn, Athletic Club and Golf Resort, Inc., the defendant in this case. You have already been given the information with respect to that entity.

And with respect to The Graham Companies, I object because the shareholders are not relevant to this eviction action and I instruct the witness not to answer.

MR. GOMEZ: We're talking about the same people that own both of them. He doesn't have to get involved in greater detail.

MS. JOYCE: I object to the word ownership.

MR. GOMEZ: Of the stock?

MS. JOYCE: I have to object too, with respect to The Graham Companies and ask him not to answer that.

MR. GOMEZ: Certify that.

BY MR. GOMEZ:

Q You indicated that Mr. Karsteter was paid by The Graham Companies; correct?

A Yes.

Q He was employed by this other entity, Miami Lakes Inn, Athletic Club and Golf Resort, Inc.?

A Yes.

Q Why did The Graham Companies pay his salary?

A The Graham Companies acts as a clearinghouse for payment of all payroll for any of the related companies, including the Miami Lakes Inn, Athletic Club and Golf Resort, Inc.

Q All employees of Miami Lakes for all these various entities receive their pay from The Graham Companies?

A That is correct.

Q Were you aware of any contract of employment between the Miami Lakes Inn, Athletic Club and Golf Resort, Inc. and/or Miami Lakes Inn and Country Club with Mr. Karsteter?

A No.

Q How did you come up with the terms of what to pay him?

A Payroll authorization.

Q Where would you get that information?

A From Mr. Karsteter's personnel file.

Q Do you have that?

A Yes.

Q May I see it?

A Here.

Q The material you removed is what?

A This is information that I provided in lieu of copies of cancelled checks that you requested.

Q This is for me, also?

A Yes.

MR. GOMEZ: Let's take a break.

(Recess taken.)

BY MR. GOMEZ:

Q Before I get to the personnel files, those credit cards I showed to you which you had some understanding of, are there any other credit cards that would have been issued to Mr. Karsteter for his use while he was an employee of The Graham Companies?

MS. JOYCE: Objection to the question. It is not calculated to lead to relevant information about the eviction suit and issue of possession.

I instruct the witness not to answer.

MR. GOMEZ: You are aware that we have not filed our defenses yet?

MS. JOYCE: Yes. The issues are possession. This is an eviction action and the issue is entitlement to possession.

MR. GOMEZ: Certify the question.

May I assume, then, you will not allow him to any questions relating to other benefits that were provided to Mr. Karsteter through the Sengra Corporation and/or The Graham Companies?

MS. JOYCE: Yes. I would have the same objection.

MR. GOMEZ: Same instructions and same certification and we will let the judge decide.

MS. JOYCE: Yes.

BY MR. GOMEZ:

Q The personnel file you handed to me, is this customarily in your possession?

A Yes.

Q With regard to the reasons for termination, I presume that's something outside your purview? Am I correct?

A Yes.

Q You don't know anything about Mr. Karsteter's employment; how he did or didn't do?

A That is correct.

Q That is something we need to ask Mr. Younts about?

A That is correct.

Q The memorandum in your file pertaining to Mr. Karsteter from David Younts, announcing Mr. Karsteter's joining the management team at Miami Lakes, this is all employees of the Graham Companies or which employees are we talking about?

A I'm not sure which employees received a copy of that memorandum.

Q The payroll authorization and change form, where it indicates job classification and comments. It says Food and Beverage Director, includes duplex and GTD bonus, Guarantee bonus of $5,000, review salary 5/31/85.

A Yes.

Q That's what I'm reading?

A Yes.

Q What does that mean, "includes duplex"?

A That, I am not sure.

Q Have you seen that notation on any other employee personnel files?

A No.

Q That is a first?

A This is the only one that I'm aware of.

Q Until you came here today, were you aware that Mr Karsteter was apparently provided some sort of living accommodation as part of his employment?

A I was not 100 percent informed of what the arrangements were.

Q Even today, or do you know now?

A Well, at this point, I'm still not quite certain.

Q What do you think the arrangements were, even if you're not 100 percent certain?

MS. JOYCE: Objection. Mr. Feathers has told you what he does know. Rather than hazarding guesses, it is better he testifies to what he knows.

BY MR. GOMEZ:

Q Give us your best understanding of what the arrangements were of how Mr. Karsteter came into possession of these premises and which we have legal proceedings to see that that changes.

MS. JOYCE: If he knows.

BY MR. GOMEZ:

Q Obviously.

A I'm not 100 percent privy to the arrangement other than the salary between Mr. Karsteter and the Miami Lakes Inn, Athletic Club and Golf Resort.

Q Would there be anyone else in a position who collects the money or pays the bills in the position who could give us information on that, other than yourself?

A I don't know.

MS. JOYCE: Objection to the form of the question.

BY MR. GOMEZ:

Q Were you ever requested to make any journal entries with regard to the occupancy of this duplex?

A No.

Q To your knowledge, has there ever been any journal entries with regard to the occupancy of this duplex?

A Yes.

Q By whom and when?

A By our—The Graham Companies accounting department.

Q Who are those people?

A Controller, James W-i-b-e-r-g.

Q That would be the person that has the information?

A Yes.

Q Have you seen any journal entries?

A No.

Q When were you aware there were any journal entries?

A I would assume that there would be journal entries to record the income on this duplex. I did not see any journal entries.

Q I am trying to find out what you know. You have never seen any journal entries?

A No.

Q When did you become aware that there were any journal entries or are you just assuming there were?

A I am assuming.

Q Why would there be journal entries and why would you assume there would be journal entries?

A There would be journal entries to record the income on one company's books and the expense on the related company's books.

Q To your knowledge, has there ever been any journal entries with regard to employment before? Did you say that before?

A Repeat the question.

MS. VOS: Objection to the form.

MR. GOMEZ: I apologize.

BY MR. GOMEZ:

Q Prior to this particular transaction where Mr. Karsteter, as part of his employment, was provided living accommodations, with this duplex, did you say that you were not aware of this having occurred before?

A I believe I replied I did not know—That is correct. I did reply that.

Q Am I correct, you are not aware of any other journal entries known or assumed?

A Yes.

Q If there has been any journal entries previously, this James Wiberg would be the one to talk to?

A Yes.

Q He's located at the same address that you are?

A That is correct.

Q He is in the Accounting Department for all these companies?

A That is correct. He's the controller.

Q If he puts it down, he's in charge of the books for Miami Lakes Inn, Athletic Club and Golf Resort, Inc. and the Graham Companies, he's got both set of books?

A Yes.

Q He can put from this one to that one or choose not to?

A That is correct.

MS. VOS: I object to that characterization of his job duties.

BY MR. GOMEZ:

Q Before The Graham Companies came into existence, who paid Mr. Karsteter?

A The Sengra Corporation.

Q Have you had any discussions with Mr. Younts before you came here today?

A Yes.

Q About this case?

A No, not in particular this case. I have talked to Mr. Younts before this.

Q I would hope you had spoken to him.

In terms of what we are here today about, did you discuss this with him at all?

A No.

Q Did you discuss with anyone before you came?

A Yes.

Q Other than your attorney.

A No.

Q Have you discussed this case at all with anyone from the Greenberg, Traurig law firm?

A No.

Q This young lady sitting here?

A No.

MR. GOMEZ: That is all I have.

MS. JOYCE: We waive.

MR. GOMEZ: I want these marked as exhibits.

(Thereupon, the documents referred to were marked as Defendant Karsteter's Exhibit No. 1 for Identification.)

(Thereupon, the reading, signing and notice of filing were duly waived.)

(Thereupon, the deposition was concluded at 3:00 o'clock p.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

I, ELLIS TREMPER, a Registered Professional Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I reported the deposition of EDWIN FEATHERS, JR., a witness called by the Defendant Karsteter in the above-styled cause; that the witness was first duly sworn by me; that the foregoing pages, numbered from 1 to 30, inclusive, constitute a true record of the deposition of said witness.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

WITNESS my hand and official seals in the City of Miami, County of Dade, State of Florida, this 1 day of July, 1986.

/s/ ELLIS TREMPER

Registered Professional Reporter
and
Notary Public,
State of Florida at Large.

My Commission expires:
January 23, 1990.

APPENDIX P

[FILED FOR RECORD 1987 JUL 21 AM 11:41]

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE CIRCUIT COURT
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

APPELLATE DIVISION

Case NO. 86-269-AP

CHRIS KARSTETER,

Appellant,

vs.

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORP.,

Appellee.

Opinion filed July 21, 1987

An appeal from the County Court for Dade County.
Matti Bell Davis, Judge

Steven A. Edesltein, Attorney for Appellant,

Elizabeth W. Joyce, Attorney for Appellee.

Before HENDERSON, SALMON, GREENBAUM, JJ.

PER CURIAM

AFFIRMED.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR DADE COUNTY

APPELLATE DIVISION

CASE NO. 86-269-AP

CHRIS KARSTETER,

Appellant,

vs.

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORP., ETC.,

Appellee.

ORDER GRANTING APPELLEE'S MOTION FOR ATTORNEYS FEES

THIS COURT having examined the Motion for Attorney Fees and being fully advised in the premises, it is

ORDERED AND ADJUDGED that the said Motion for Attorney Fees is hereby granted.

Order filed September 14, 1987.

Before SALMON, HENDERSON, GREENBAUM, JJ.

CC: ELIZABETH W. JOYCE, P.A.
STEVEN A. EDELSTEIN, ESQ.

* FEES TO BE AWARDED BY TRIAL COURT UPON MOTION & HEARING.

* THIS IS A CORRECTED ORDER, Previous Order issued September 8, 1987.

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 86-3797 CC23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION,
a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC. f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

FINAL JUDGMENT FOR ATTORNEY'S FEES ON APPEAL

THIS CAUSE came on to be heard before me upon the Plaintiff/Appellee's Motion for Final Judgment awarding attorney's fees on Appeal to Appellee, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, and the Court having reviewed the Order of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, dated September 14, 1987, granting Appellee's Motion for Attorney's Fees and directing that the said fees are to be awarded by the Trial Court upon Motion and Hearing, and the Court having been advised that the parties, through counsel, have stipulated and agreed as to the amount of the fees to be awarded to the Appellee, and the Court being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. That the Motion for Final Judgment awarding attorney's fees to Appellee, THE GRAHAM COMPANIES

f/k/a THE SENGRA CORPORATION, a Florida corporation, be, and the same is hereby, granted.

2. That a Final Judgment be, and it is hereby, entered in favor of Plaintiff/Appellee, the GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, and against Defendant/Appellant, CHRIS KARSTETER, for attorney's fees on Appeal, and that the Plaintiff/Appellee, THE GRAHAM COMPANIES a/k/a THE SENGRA CORPORATION, a Florida corporation, have and recover from Defendant/Appellant, CHRIS KARSTETER, the sum of $4,250.00, for which let execution issue.

DONE AND ORDERED at North Miami Beach, Dade County, Florida, this 16 day of December, 1987.

[Signature illegible]

County Court Judge

Conformed copies furnished to:

WISEHEART & JOYCE, P.A.
Attorneys for Plaintiff/Appellee,
THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation

RESS, GOMEZ, ROSENBERG, HOWLAND & MINTZ, P.A.
Attorneys for Defendant/Appellant,
CHRIS KARSTETER

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1988
FRIDAY, MARCH 11, 1988

CASE NO. 87-2084

CHRIS KARSTETER,

Petitioner,

vs.

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION,
a Florida corporation,

Respondent.

Upon consideration, the motion for attorney's fees filed by counsel for respondent is granted and remanded to fix amount.

A True Copy

ATTEST:

LOUIS J. SPALLONE

Clerk District Court of
Appeal, Third District

By /s/ Delberto R. [Illegible]
Chief Deputy Clerk

cc: Elizabeth W. Joyce
Steven A. Edelstein
Richard P. Brinker

/rh

IN THE COUNTY COURT, IN AND
FOR DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 86-3797 CC23

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION,
a Florida corporation,

Plaintiff,

vs.

MIAMI LAKES INN, ATHLETIC CLUB AND GOLF RESORT, INC. f/k/a MIAMI LAKES INN AND COUNTRY CLUB, a Florida corporation and CHRIS KARSTETER AND ALL OTHERS IN POSSESSION,

Defendants.

FINAL JUDGMENT FOR ATTORNEY'S FEES IN CERTIORARI PROCEEDINGS

THIS CAUSE came on to be heard before me upon the Plaintiff/Respondent's Motion for Final Judgment awarding attorney's fees in Certiorari proceedings to Respondent, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, and the Court having reviewed the Order of the Third District Court of Appeal, dated March 11, 1988, granting Respondent's Motion for Attorney's Fees and remanding the case for a determination and award attorney's fees in the Certiorari proceedings to the Respondent, THE GRAHAM COMPANIES, and the Court having been advised that the parties, through counsel, have stipulated and agreed as to the amount of the fees to be awarded to the Respondent, and the Court being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. That the Motion for Final Judgment awarding attorney's fees in the Certiorari proceedings to the Respondent, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, be, and the same is hereby, granted.

2. That a Final Judgment be, and it is hereby, entered in favor of Plaintiff/Respondent, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, and against Defendant/Petitioner, CHRIS KARSTETER, for attorney's fees in the Certiorari proceedings, and that the Plaintiff/Respondent, THE GRAHAM COMPANIES f/k/a THE SENGRA CORPORATION, a Florida corporation, have and recover from Defendant/Petitioner, CHRIS KARSTETER, the sum of $3,875.00, for which let execution issue.

DONE AND ORDERED at North Miami Beach, Dade County, Florida, this 13 day of May, 1988.

/s/ ELI BREGER
County Court Judge

Conformed copies furnished to:

WISEHEART & JOYCE, P.A.
Attorneys for Plaintiff/Respondent
THE GRAHAM COMPANIES a/k/a THE SENGRA CORPORATION, A Florida corporation

RESS, GOMEZ, ROSENBERG, HOWLAND & MINTZ, P.A.
Attorneys for Defendant/Petitioner,
CHRIS KARSTETER

SUPREME COURT OF FLORIDA

WEDNESDAY, JUNE 22, 1988

CASE NO. 72,186

DISTRICT COURT OF APPEAL,
THIRD DISTRICT

No. 87-2084

CHRIS KARSTETER,

Petitioner,

v.

GRAHAM COMPANIES
f/k/a SENGRA CORPORATION,
a Florida corporation,

Respondent.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

Respondents Motion for Attorneys Fees is granted and said attorney is allowed a fee of five hundred dollars ($500.00) for services in this Court, said sum to be paid to said attorney by Petitioner after final disposition of this cause.

MCDONALD, C.J., OVERTON, BARKETT, GRIMES and KOGAN, JJ., concur

H

cc: Hon. Louis J. Spallone, Clerk
Hon. Richard P. Brinker, Clerk
Hon. James C. Henderson, Judge
Hon. Michael Salmon, Judge
Hon. Martin Greenbaum, Judge

Steven A. Edelstein, Esquire
Elizabeth W. Joyce, Esquire
Janet Reno, Esquire

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

(SEAL)

By: Deputy Clerk

APPENDIX Q

521 SOUTHERN REPORTER, 2d SERIES 298

Chris KARSTETER,

Petitioner,

v.

The GRAHAM COMPANIES f/k/a the Sengra Corporation, a Florida corporation,

Respondent.

No. 87-2084.

District Court of Appeal of Florida, Third District.

March 8, 1988.

Petition for writ of certiorari was filed following decision of the Circuit Court, Dade County, James C. Henderson, Michael Salmon and Martin Greenbaum, JJ. The District Court of Appeal held that statute requiring tenant asserting right to possession to deposit rent into court registry pending resolution of litigation was not unconstitutional.

Certiorari denied.

Deposits in Court —1

Statute requiring tenant asserting right to possession to deposit rent into court registry pending resolution of litigation was not unconstitutional. West's F.S.A. §§ 83.60(2), 718.401(4).

Ress, Gomez, Rosenberg, Howland & Mintz and Steven A. Edelstein, North Miami, for petitioner.

Wisehart & Joyce and Elizabeth W. Joyce, Miami for respondent.

Before BASKIN, FERGUSON, JORGENSON, JJ.

PER CURIAM.

Section 83.60(2), Florida Statutes (1985), which requires a tenant asserting a right to possession to deposit rent into the court registry pending resolution of the litigation, is not unconstitutional. *See Lindsey v. Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972); *K.D. Lewis Enters. Corp. v. Smith*, 445 So.2d 1032 (Fla. 5th DCA 1984). *See* § 718.401(4), Fla.Stat. (1985); *Farrell v. Drew*, 19 N.Y.2d 486, 281 N.Y.S.2d 1, 227 N.E.2d 824 (1967).

Certiorari denied.

APPENDIX R

FLORIDA STATUTES (1983)

59.46 Attorney's fees.—In the absence of an expressed contrary intent, any provision of a statute or of a contract entered into after October 1, 1977, providing for the payment of attorney's fees to the prevailing party shall be construed to include the payment of attorney's fees to the prevailing party on appeal.

83.44 Obligation of good faith.—Every rental agreement or duty within this part imposes an obligation of good faith in its performance or enforcement.

83.48 Attorney's fees.—In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorney's fees, from the nonprevailing party.

83.57 Remedies; termination of tenancy without specific term.—A tenancy without a specific duration, as defined in s. 83.46(2) or (3), may be terminated by either party giving written notice in the manner provided in s. 83.56(4), as follows:

(1) When the tenancy is from year to year, by giving not less then 60 days' notice prior to the end of any annual period;

(2) When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;

(3) When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

83.64 Retaliatory conduct.—

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;

(b) The tenant has organized, encouraged, or participated in a tenants' organization; or

(c) The tenant has complained to the landlord pursuant to s. 83.56(1).

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him for possession.

(3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.

(4) "Discrimination" under this action means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

Supreme Court, U.S.
FILED
NOV 17 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-473 (3)

in the Supreme Court of the United States of America

OCTOBER TERM, 1988

CHRIS KARSTETER,

Petitioner

vs.

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA THIRD DISTRICT, REVIEW DENIED BY THE SUPREME COURT OF FLORIDA

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40 pp

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STATEMENT OF THE CASE

The Respondent, THE GRAHAM COMPANIES,[1] a Florida corporation, ("GRAHAM"), is the owner of a duplex apartment located in Miami Lakes, Florida, which was leased to MIAMI LAKES INN ATHLETIC CLUB AND GOLF RESORT, INC., a Florida corporation, ("MIAMI LAKES INN"), under a written lease agreement which commenced October 1, 1985, and ended September 30, 1986, and which specified a monthly rent of $730.00. (App. B-22). At all times material, MIAMI LAKES INN used the leased premises to house its employees. (App. K-19).

At the time of the execution of the lease, MIAMI LAKES INN employed an individual named CHRIS KARSTETER and permitted him to reside in the apartment during the period of his employment. CHRIS KARSTETER is the Petitioner herein and shall be referred to as "KARSTETER".

The terms of KARSTETER's employment by MIAMI LAKES INN were set out in a letter dated August 20, 1984, and included a provision that MIAMI LAKES INN would pay KARSTETER a salary at the rate of $37,500.00 per year and would provide housing for him during his employment. (App. B-16). Nothing in the letter of August 20, 1984, however, or any other document, guaranteed a minimum or fixed period of employment; nor did anything in the letter or any other document provide that either GRAHAM or MIAMI LAKES INN would provide housing for KARSTETER *after* his employment was terminated.

On April 21, 1986, MIAMI LAKES INN terminated KARSTETER's employment and paid him a severance fee

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[1]The Graham Companies, formerly known as the Sengra Company, is a Florida corporation which has no parent company, affiliates or subsidiaries except for wholly owned subsidiaries.

of $10,000.00. (App. K-7). MIAMI LAKES INN agreed to continue to pay rent for KARSTETER for the month of May, 1986, but advised him that, as of June 1, 1986, he would have to pay the monthly rent to GRAHAM, as provided in the Lease, if he wished to continue residing on the premises.

MIAMI LAKES INN did not make rental payments after May, 1986. (App. L-24). KARSTETER refused to pay the rent for June, 1986, and refused to vacate. On June 2, 1986, GRAHAM served a statutory Three-Day Notice requiring payment of rent or surrender of possession. (App. A-4). Neither MIAMI LAKES INN nor KARSTETER paid the required rent although KARSTETER continued to remain in possession. (App. L-24).

GRAHAM then filed a complaint in County Court for removal of tenant for non-payment of rent, naming KARSTETER and MIAMI LAKES INN as defendants. (App. A-1). Each defendant was served with a summons containing the following "Cautionary Warning":

> **CAUTIONARY WARNING**
>
> If this is an action for possession of a dwelling unit based upon non-payment of rent and if you interpose any defense to this action other than payment of rent, you must pay into the registry of the County Court the accrued rent as alleged in the attached Complaint or as may be determined by the Court and the rent which accrues during the pendency of these proceedings when due. Your failure to pay rent into the registry of the County Court as stated above constitutes an absolute waiver of your defenses other than payment and the Plaintiff will be entitled to an immediate default.

MIAMI LAKES INN filed an Answer admitting all of the allegations of the complaint. (App. A-10-12). KARSTETER filed an Answer and Affirmative Defenses contending that

KARSTETER should be permitted to remain in possession of the premises, which had been provided to him as part of his employment, until the expiration of the Lease between GRAHAM and MIAMI LAKES INN, on September 30, 1986. KARSTETER admitted that he had been discharged by MIAMI LAKES INN but claimed that he should be allowed to live to the end of the Lease rent-free; his claim was based upon "his understanding" that he would be provided employment on a "per annum" basis and that his housing would be provided on a "per annum" basis as well. (App. N-4).

KARSTETER also filed a Counterclaim against GRAHAM and a Crossclaim against MIAMI LAKES INN. (App. B-5-14). KARSTETER's Counterclaim and Crossclaim are both currently pending in the Circuit Court of the Eleventh Judicial Circuit of Florida and are to be tried before a Jury. (App. L-1-2).

In the proceedings below, GRAHAM filed a Notice of Demand of Payment of Rent *Pendente Lite* into the Registry of the Court pursuant to Florida's Rent Deposit Statute, Florida Statute §83.60(2). (App. F-1-2). This Statute, which has now been modified, provided at the material time as follows:

> In an action by the landlord for possession of a dwelling unit, if a tenant interposes any defense other than payment, the tenant shall pay into the Registry of the Court the accrued rent as alleged in the Complaint or as determined by the Court and the rent which accrues during the pendency of the proceedings, when due. The Court shall notify the tenant of such requirement. Failure of the tenant to pay the rent into the Registry of the Court as provided herein constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default.

KARSTETER refused to deposit any monies into the Registry of the Court. Likewise, KARSTETER did not exercise his right under Florida law to file a Motion for Determination of Amount to be Deposited in the Court Registry. GRAHAM then filed a Motion to Strike the Pleadings of Defendant, KARSTETER, and for Entry of Default. (App. G-1-2).

At a hearing on GRAHAM's Motion on July 9, 1986, the Trial Judge determined that KARSTETER should pay into the Registry of the court $1,460.00. (App. K-5). The Trial Judge gave KARSTETER ten (10) days within which to deposit the money into the Registry or to submit some "mighty convincing case law to the contrary that the deposit was not required." (App. K-6). KARSTETER did not deposit the $1,460.00 into the Court Registry, but filed a Memorandum of Law contending that the statute was unconstitutional. (App. I-1).

On July 22, 1986, a successor Trial Judge heard KARSTETER's argument as to the alleged unconstitutionality of Florida Statutes §83.60(2). The successor Trial Judge did not hold the Statute unconstitutional, but did offer to give KARSTETER yet additional time in which to deposit the $1,460.00 into the Court Registry. (App. K-11). The Trial Court also made clear that "[if KARSTETER did] not choose to put the money into the Registry of the Court, he [would] lose possession, but he [could] still proceed with this cause under the Counterclaim and the Crossclaim". (App. K-12). KARSTETER's counsel declined the Court's offer to extend the time for making the deposit, stating, "Your Honor, in all candor, Mr. KARSTETER, as far as I am aware, has no intention of placing the money into the Court Registry." (App. K-13). The Trial Judge thereupon entered an Order granting Default against KARSTETER on GRAHAM's Complaint for Removal of Tenant and transferring KARSTETER's Counterclaim and Crossclaim to Circuit Court. (App. L-1, 2).

On August 4, 1986, the Trial Court held a final hearing on the default. KARSTETER appeared in person for the first time, with his counsel. (App. L-5). The Court advised KARSTETER that the Court had offered to give him an opportunity to deposit the $1,460.00 into the Court Registry and that there had been a refusal to do so on the part of his counsel. The Court then asked KARSTETER's counsel to confirm his client's intention and KARSTETER's counsel indicated that the Court was correct as to the Court's previous offer and the fact that KARSTETER intended to place no money in the Registry. (App. L-6). The Trial Court then proceeded to permit GRAHAM to prove up its case and granted Final Judgment for Removal of Tenant. (App. L-8-32). At the time of the final hearing and at the time of the Trial Court's last offer to KARSTETER to deposit the $1,460.00 in the Registry, $1,460.00 represented the rent which had accrued during the proceedings.

KARSTETER took an appeal of the Final Judgment to the Circuit Court for the Eleventh Judicial Circuit of Florida. KARSTETER's only point on appeal was that the Trial Judge did not declare Florida's Rent Deposit Statute unconstitutional. The Circuit Court, sitting in its appellate capacity, affirmed *per curiam* the Final Judgment for Removal of Tenant. (App. P-1).

KARSTETER then sought a Writ of Certiorari in Florida's Third District Court of Appeal. The Third District Court of Appeal denied the Petition, stating that Florida's Rent Deposit Statute "is not unconstitutional."

KARSTETER next urged the Florida Supreme Court to exercise its discretionary jurisdiction to accept his case for review. The Florida Supreme Court declined to do so. (App. P-8, 9).

KARSTETER now urges this Honorable Court to review the decisions of the four Florida courts below, none of which has accepted his contentions.

SUMMARY OF ARGUMENT

The Petitioner has failed to demonstrate any basis for invoking this Court's jurisdiction to consider his Petition for Writ of Certiorari inasmuch as these proceedings are clearly moot. These proceedings arise from an action for removal of tenant for non-payment of rent. The tenant is no longer in possession of the subject premises and never claimed to be entitled to possession after September 30, 1986, a date which has long since passed. The lease relied upon by the tenant has expired. The Florida Legislature has altered the operative statute. The exception to the doctrine of mootness known as cases "capable of repetition yet evading review" is not applicable. This Honorable Court therefore should decline jurisdiction and deny the Petition for Certiorari as moot.

In any event, the Petition fails to present a real and substantial federal question. The Petitioner seeks a declaration that Florida's Rent Deposit Statute is violative of the Federal Constitutional guarantees of due process and equal protection of the laws. This Honorable Court's prior decisions, including *Lindsey v. Normet*, 405 U.S. 56 (1972) which upheld a Rent Deposit Statute against the same constitutional attack which Petitioner would mount here, foreclose the need for further analysis or consideration of the Petition.

Finally, Florida's Rent Deposit Statute which required that tenants post the accruing rent into the Court Registry is clearly constitutionally valid as a rational means of achieving a valid state objective, namely, the protection of property owners against undeserved economic loss.

ARGUMENT

I.

PETITIONER HAS FAILED TO DEMONSTRATE ANY BASIS FOR JURISDICTION OF THIS COURT TO ISSUE A WRIT OF CERTIORARI INASMUCH AS THESE PROCEEDINGS ARE CLEARLY MOOT.

It is a fundamental principle governing this Honorable Court's jurisdiction that only actual controversies may be reviewed; proceedings before this Court will not be allowed to settle mere abstract, academic, or moot questions. *DeFunis v. Odegaard*, 416 U.S. 312 (1974); *North Carolina v. Rice*, 404 U.S. 244 (1971). See, generally, 14 American Jurisprudence, Second Edition, *Certiorari* §8. Mootness can best be defined as "the doctrine of standing set in a time frame; the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." Monaghan, "Constitutional Adjudication: The Who and When", 82 *Yale L.J.* 1363, 1384 (1973), quoted with approval in *United States Parole Commission vs. Geraghty*, 445 U.S. 388 (1980). An appeal is moot then where reversal of the proceedings below would be ineffectual as a practical matter and of no benefit to the parties seeking it. See. e.g., *Doe v. U.S. Civil Service Commission*, 483 F.Supp. 539 (U.S. Dist. Ct. S.D. New York, 1980).

A. THE PROCEEDINGS BELOW CONSISTED OF AN ACTION TO DISPOSSESS PETITIONER AND PETITIONER IS NO LONGER IN POSSESSION.

The rule that an appellate court will not review proceedings where no useful or practical purpose can be served by granting reversal has particular application to possessory actions where the tenant is no longer in possession. Thus, the editors of *Corpus Juris Secundum* state that where the question presented by an appeal is the right of an

appellant "to possession of property, the appeal must be dismissed as presenting a moot question where the right to possession has been lost, or would have been lost before the appeal can be decided, or possession has been abandoned." 5 C.J.S. §1392, Appeal & Errors.

Where, as here, the vacating tenant seeks to mount a constitutional challenge to the landlord and tenant statutes, there is even a stronger reason for this Honorable Court to decline jurisdiction. Thus, in *Sanks v. Georgia*, 401 U.S. 144 (1970), the United States Supreme Court dismissed two tenants' appeal in an action for Removal of Tenant and refused to consider the tenants' attack on the constitutionality of Georgia's rent deposit statute where, among other things, the tenants had vacated the premises prior to the Court's determination of the appeal. Quoting from its decision in *United States v. Petrillo*, 332 U.S. 1, 5 (1947), this Court pointed out, "We have consistently refrained from passing on the constitutionality of a statute until a case involving it has reached a state where the decision of a precise constitutional issue is a necessity." 401 U.S. 144 at 151. The Court then concluded, "Manifestly, it cannot plausibly be maintained that this is such a case. Indeed, the only thing that is now apparent about this lawsuit is that the clear-cut constitutional issues it formerly presented cannot with any certainty be said to be relevant to the issues remaining in it, if, in fact, any issues do remain." 401 U.S. 144 at 151.

Likewise, with the departure of KARSTETER from the premises, no clear-cut constitutional issue remains in these proceedings. Therefore, KARSTETER's Petition for Certiorari should be denied.

B. PETITIONER IS NOT ONLY OUT OF POSSESSION BUT AGREED VOLUNTARILY TO SURRENDER POSSESSION, AND DID SO, AFTER BEING GIVEN ADDITIONAL TIME.

The rule that a tenant may not appeal an adverse judgment in a possessory action where the tenant is no longer in possession is universally accepted in all jurisdictions where the tenant voluntarily departed the premises.[2]

In his brief, KARSTETER maintains that his departure was not voluntary since there was no agreement as to the departure date and since he left only because of his fear of imminent physical eviction by the Sheriff. This contention, however, is not borne out by the record which clearly shows that KARSTETER asked for some additional time in which to move out, that KARSTETER indicated that he would voluntarily vacate without the necessity of the issuance of a Writ of Possession if given such additional time, and that the parties, through counsel, agreed to an actual departure date.

> KARSTETER's ATTORNEY: Is there some time we can get—
>
> GRAHAM's ATTORNEY: How about this weekend? Can we stipulate?
>
> KARSTETER's ATTORNEY: Fine.
>
> GRAHAM's ATTORNEY: I [actually, he] will be out this weekend and we can stipulate to it on Monday.
>
> KARSTETER's ATTORNEY: Give him until the 15th, and we will be out before then and I represent that to you.
>
> Thank you, Judge. (App. L-54).

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[2]See, *Class v. Carter*, 624 P.2d 626 (Ct.App.Ore. 1980); *Allmer v. Andrews*, 386 P.2d 705 (Sp.Ct.Colo. 1963); *Vlahos v. DeLong*, 209 S.E.2d 12 (Ct.App.Ga., 1974); *Hester v. Sammons*, 126 S.E.2d 484 (Ct.App.Ga. 1962); *Barcom, Inc. v. Doll*, 119 So.2d 544 (Ct.App.La. 1960); *Soileau v. Knighten*, 423 So.2d 61 (La.App.1st Cir. 1982); and *Lee v. Tollerson*, 228 S.E.2d 595 (Ct.App.Ga. 1976).

The Court, in fact, adopted the parties' stipulation:

> THE COURT: Here are the copies of the Final Judgment entered and the Writ of Possession will not issue until August 15. (App. L-54).

KARSTETER did, in fact, vacate the premises prior to August 15, 1986, and the record reflects that no Writ of Possession ever had to be issued.

C. THE LEASE UPON WHICH PETITIONER BASED HIS ALLEGED RIGHT OF POSSESSION EXPIRED ON SEPTEMBER 30, 1986.

The Lease upon which KARSTETER based his alleged right of possession expired on September 30, 1986. KARSTETER never claimed any right to occupy the premises *after* September 30, 1986. (App. K-18, 19). A writ of certiorari directing that the Final Judgment for Removal of Tenant be set aside will not "turn back the calendar" for KARSTETER and put him back in possession for the approximate six-week period between the time he vacated and the expiration of the lease between GRAHAM and MIAMI LAKES INN. The controversy which once existed between these parties has become moot, if for no other reason, as a result of the mere passage of time. This Honorable Court has indicated that it will not sit to decide arguments after events have put them to rest. *Doremus v. Board of Education of Borough of Hawthorne,* 342 U.S. 429 (1952).

D. FLORIDA'S RENT DEPOSIT STATUTE HAS BEEN CHANGED.

As the Petitioner has indicated in his Brief, the Florida Legislature has modified Florida Statutes §83.60(2) by an amendment which took effect on October 1, 1987. A decision on the merits in this case could only effect the disposition of those pending cases, if any, governed by the pre-1987 law and would leave unaffected those cases arising after the effective date of the modified statute. A petition for certiorari to review the validity of an obsolete law is simply an

invitation to the Court to involve itself in an exercise in futility and in a purely academic pursuit. See, e.g., *Sanks v. Georgia*, 401 U.S. 144 (1970); see also, *North Carolina v. Rice*, 404 U.S. 244 (1971).

E. THE PRESENT PROCEEDINGS DO NOT FALL WITHIN THE EXCEPTION TO THE DOCTRINE OF MOOTNESS KNOWN AS CASES "CAPABLE OF REPETITION YET EVADING REVIEW."

KARSTETER does not deny that he has vacated the premises, or that the lease upon which he based his claim to possession has long expired; he claims, instead, that the present proceedings fall within the exception to the doctrine of mootness known as cases "capable of repetition, yet evading review".[3]

What KARSTETER overlooks in the first instance is that the exception to the mootness doctrine for cases which are "capable of repetition, yet evading review" requires that there be a *reasonable expectation* or *demonstrated probability* (and not a mere theoretical possibility) that the same controversy will recur between the *same complaining* parties. *Murphy v. Hunt*, 455 U.S. 478 (1982); *Weinstein v. Bradford*, 423 U.S. 147 (1975) and *Lane v. Williams*, 455 U.S. 624 (1982). KARSTETER fails to meet this requirement; that he and GRAHAM will ever enter into a landlord-tenant relationship again is a remote possibility at best. Moreover, as indicated previously, Florida's Rent Deposit Law has been changed. Now that the operative statute has been changed, any future case having similarity to the present proceedings will be governed by Florida's modified law and therefore must be attended by different constitutional analysis. KARSTETER's case itself cannot be repeated except in the highly improbable

[3]See, *e.g.*, *Moore v. Ogilvie*, 394 U.S. 81 (1969); *Southern Pacific Terminal Co. v. ICC*, 219. U.S. 498 (1911); *Roe v. Wade*, 410 U.S. 113 (1973); and *Super Tire Engineering Co. v. McCorble*, 416 U.S. 115 (1974).

event that the Florida Legislature decides to modify the state again in such fashion as to restore the pre-1987 law.

KARSTETER's reliance upon the authorities to which he cites is misplaced for a second reason; all of the cases cited by KARSTETER in his Petition involved elections, strikes, or pregnancies and therefore involved issues which became arguably moot merely because of the passage of time or because of external factors outside of the control of the litigants. Final Judgment for Removal of Tenant was entered against KARSTETER, on the other hand, and the central issue of possession became moot in his case, simply because he failed to make use of the available procedural safeguards, any one of which, if taken in timely fashion, would have prevented the case from becoming moot and would have preserved the central issue for further judicial review. KARSTETER could have (1) deposited the rent of $1,460.00 in the County Court Registry; (2) petitioned the County Court for a determination of the appropriate amount of rent to be so deposited as provided by Florida Statutes §83.60 (2); or (3) posted a supersedeas bond after Default Final Judgment as set by the County or Circuit Court and remained in possession. Since KARSTETER failed to do any of the above, he simply allowed the central issue of possession to become moot and he failed to preserve the posture of his case for further judicial review. The exception to the doctrine of mootness known as "capable of repetition yet evading review" was never intended to excuse those who seek judicial review from the responsibility for preserving the record below or for maintaining the posture of the case in order that such review can be made.

In short, if there were ever a case that was demonstrably moot, this is that case. KARSTETER has vacated the premises and has left the State of Florida. The lease upon which he based his alleged right to possession has expired. The operative statute has been changed or modified.

Since KARSTETER voluntarily vacated the premises and since he never claimed any entitlement to possession after September 30, 1986, a Writ of Certiorari issued now from this Honorable Court would be both academic and ineffectual. The posture of this case presents no necessity for judicial determination of the constitutional challenge which KARSTETER attempts to raise; indeed, the central issue of this case, namely, the entitlement to possession, is simply moot. Since the central issue or crux of this case is moot, no subsidiary or ancillary matter, such as liability for costs or attorney's fees, can save this case from mootness as a matter of law. The exception to the doctrine of mootness known as cases "capable of repetition yet evading review" has no application to these proceedings.

Accordingly, KARSTETER's Petition for Writ of Certiorari is clearly moot and should be denied by this Honorable Court.

II.

THE PETITION FOR WRIT OF CERTIORARI PRESENTS NO REAL OR SUBSTANTIAL FEDERAL QUESTION.

It is basic that a real and substantial federal question is essential to the jurisdiction of The United States Supreme Court over decisions of state courts. *Abrams v. Van Schaick*, 293 U.S. 188 (1934). It is not sufficient that the purported federal question merely be alleged. *Sawyer v. Piper*, 189 U.S. 154 (1903). In the proceedings below, KARSTETER claimed the right to live rent-free on the subject premises. He was able to do so for approximately ten (10) weeks while his claims were being adjudicated; he maintains that he would have been able to continue to do so but for the operation of Florida's Rent Deposit Statute which he claims violated his Fourteenth Amendment rights to due process of law. This Honorable Court, however, has already addressed the constitutionality of a state Rent Deposit Statute and its established precedents

foreclose the need for further analysis of the federal question purportedly presented. *Bianchi v. Morales*, 262 U.S. 170 (1926); and *Lindsey v. Normet*, 405 U.S. 56 (1972).

In *Bianchi*, this Honorable Court held that a state can, consistent with the Due Process Clause of the Fourteenth Amendment of the United States Constitution, provide separate summary proceedings to determine the right to possession of real property and exclude therefrom all claims and defenses which the occupant may have against the owner of the property except for payment. See also, *Grant Timber & Mfg. Co. v. Gray*, 236 U.S. 133 (1915).

In *Lindsey*, this Court considered the constitutionality of Oregon's Rent Deposit Statute with respect to essentially the same attacks mounted here, namely, that the statute allegedly denied due process or equal protection of the laws. The Court expressly upheld the statute, striking down as violative of due process only that portion of the Oregon Statute (having no analogue in the Florida Statutes) that specifically set the post-judgment supersedeas bond at twice the amount of rent. The Court stated:

> There are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment inapplicable to other litigants. The tenant is, by definition, in possession of the property of the landlord; unless a judicially supervised mechanism is provided for what would otherwise be swift repossession by the landlord himself, the tenant would be able to deny the landlord the rights to income incident to ownership by refusing to pay rent and by preventing sale or rental to someone else. Many expenses of the landlord continue to accrue whether a tenant pays his rent or not. Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss. . . *Lindsey v. Normet*, 405 U.S. 56, 72-73.

Indeed, the Court, in *Lindsey* noted that *failure* to require an escrow of rent from a tenant *pendente lite* could be said to deprive the *landlord* of his income and his property without the process of law. *Lindsey, supra*, at 67 n.13. In this connection, the Court noted, "Nor should we forget that Constitution expressly protects against confiscation of private property or the income therefrom." *Lindsey, supra*, at 74.

KARSTETER claims to find support in *Lindsey* for his contentions. He quotes from that case as follows:

> "While the court upheld the majority of the challenged Oregon statute, it also specifically recognized that *due process requires that there be an opportunity to present every available defense*, 405 U.S. at 66, 92 S.Ct. at 870, 31 L.E.D.2d at 46." KARSTETER's Brief, page 13.

In *Lindsey*, however, this Honorable Court went on to qualify the above statement in such fashion as to show why rent deposit statutes do not violate due process:

> "Due process requires that there be an opportunity to present every available defense." *American Surety Co. v. Baldwin*, 287 U.S. 156, 168 (1932). See also *Nickey v. Mississippi*, 292 U.S. 393, 396 (1934). Appellants do not deny, however, that there are available procedures to litigate any claims against the landlord cognizable in Oregon. Their claim is that they are denied due process of law because the rental payments are not suspended while the alleged wrongdoings of the landlord are litigated. We see no constitutional barrier to Oregon's insistence that the tenant provide for accruing rent pending judicial settlement of his disputes with the lessor. *Lindsey, supra*, at 66.

There are clearly available procedures in Florida for KARSTETER "to litigate any claim" against his former landlord or former employer. Indeed, KARSTETER filed a

Counterclaim and Crossclaim both of which were left standing and are now awaiting jury trial. A tenant who fails to comply with the Florida Rent Deposit Law only loses his right to possession, he does not lose the right to litigate any cognizable claim. *K.D. Lewis Enterprises Corporation v. Smith*, 445 So.2d 1032 (Fla. 5th DCA 1984).

In this connection, it should also be noted that KARSTETER lost possession because of his adamant refusal to place *any* funds in the Registry, whether for accrued rent or for rent as it would accrue during the proceedings. By the time Default Final Judgment was entered against him, the amount of rent required by the Trial Court to be deposited represented only the rent *accruing* during the trial proceedings. The Trial Court, it will be recalled, set the required deposit in the amount of $1,460.00 on July 9, 1986, and *never increased the amount.* (App. K-5). KARSTETER was subsequently given multiple opportunities to deposit that amount and to proceed to the jury trial he purportedly wanted. (App. K-11, 12; L-6). When KARSTETER rejected the Court's last offer, on August 4, 1986, to post $1,460.00 into the Registry, the total rent owning at that time was $2,190.00, representing rent due for the months of June, July and August, 1986 at $730.00 per month; of this amount, $1,460.00 represented rent *accruing during the pendency of the proceedings*, namely, rent in the amount of $730.00 which accrued on July 1, 1986, and rent in the amount of $730.00 which accrued on August 1, 1986. The rent, according to the Lease, was payable in advance on the first day of each month. App. A-6. See, also, F.S. 83.46(1). Therefore, Default Final Judgment was entered against KARSTETER for failure to pay "accruing rent" or the rent as it accrued during the proceedings.

Finally, in his Brief, KARSTETER attempts to distinguish the Oregon Statute which was upheld in *Lindsey* from the Florida Rent Deposit Statute by pointing out that failure to comply with the Oregon Statute forced the tenant

to go to Trial in two days whereas failure to comply with the Florida Statute restricts, at least facially, the issues at trial to payment. The distinction, however, is more apparent than real. First, it is doubtful that any defense more complicated than "payment" could be presented effectively in only two days. Secondly, in actual practice and as indicated by Florida caselaw, Florida tenants are able to raise, and to be heard upon, many other defenses without first having to deposit any funds into the Court Registry.[4] Moreover, additional defenses may be raised by Motion for Re-Hearing or New Trial or by Motion to Set Aside Final Judgment, without making any deposit of funds into the Registry.[5] Most significantly, of course, what KARSTETER overlooks is that this Honorable Court has already held that a state may constitutionally restrict the issues to be decided in summary proceedings for recovery of real property to "payment". *Bianchi v. Morales*, 262 U.S. 170 (1926); *Grant Timber & Mfg. Co. v. Gray*, 236 U.S. 1233 (1915).

In the words of one leading commentator on Florida Landlord and Tenant Law who has analyzed its federal constitutional consequences:

> It seems obvious that Florida's statute has been approved by proxy in *Lindsey v. Normet, supra*, and that any constitutional challenge to the statute would be foreclosed. Boyle, *Landlord's Remedies in Florida*, p. 172.

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[4]See, e.g., *Mihaley v. White*, 15 Fla. Supp. 2d 57 (Cty. Ct. Sarasota Cty. 1986); *Wallace v. Shaw*, 20 Fla. Supp. 2d 107 (Cty. Ct. Palm Beach Cty. 1986); *Johnson v. Kalliorinen*, 16 Fla. Supp. 2d 86 (Cty. Ct. Palm Beach Cty. 1986).

[5]See Florida Statute §51.011 and Rule 1.540, Florida Rules of Civil Procedure.

Where the previous decisions of the United States Supreme Court clearly foreclose further analysis of the issue to be reviewed, no real or substantial federal question is presented and this Court should deny certiorari.[6]

Thus, this Honorable Court should deny KARSTETER's Petition for Certiorari.

III.

FLORIDA'S RENT DEPOSIT STATUTE IS CONSTITUTIONALLY VALID AS A RATIONAL MEANS OF ACHIEVING THE VALID OBJECTIVE OF PROTECTING PROPERTY OWNERS FROM UNDESERVED ECONOMIC LOSS.

Historically, and prior to the enactment of the Florida Residential Landlord and Tenant Act (of which F.S. §83.60(2) is a part), Florida tenants were simply unable to raise any substantive defense to an action for possession for non-payment except for the defense of actual payment.[7] The Residential Landlord and Tenant Act, which was passed in 1973, can be fairly characterized as a revolutionary advance in tenants' rights. By that legislation, tenants were granted, for the first time, the right in removal actions to raise "any defense, whether legal or equitable", including the landlord's material non-compliance with the landlord's statutory duties. F.S. §83.60(1) and F.S. §83.51. The Act also eliminated any doubt about the availability of "self-help"; henceforth, it would be clear the Florida property owners were required to

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[6] *California Water Serv. Co. v. Redding*, 304 U.S. 252 (1938); *Minneapolis, St. P. & S. Ste M.R. Co. v. C.L. Merrick Co.*, 254 U.S. 376 (1920); and *Leonard v. Vicksburg S. & P.R. Co.*, 198 U.S. 416 (1905).

[7] *Brownlee v. Sussman*, 238 So.2d 317 (Fla. 3d DCA 1970); *Nevins Drug Co., Inc. v. Bunch*, 63 So.2d 329 (Fla. 1953); *Rader v. Prather*, 130 So. 15 (Fla. 1930); and *Masser v. London Operating Co.*, 145 So. 79 (Fla. 1932).

resort to legal process to recover possession of rental property except in cases of surrender or abandonment. F.S. §83.59(3). Consequently, viewed in its historical context, the Florida Rent Deposit Statute (F.S. §83.60(2)) does not represent a curtailment of any rights enjoyed by tenants at the time of the enactment of either the Florida or the United States Constitutions. Instead, it simply provides for a statutory showing of good faith on the part of the tenant, as a procedural prerequisite, to the raising of defenses not hitherto available to tenants in possessory actions. The defenses in question, if not raised in good faith, could easily be used to destroy the summary nature of the proceedings and to inflict undeserved economic loss on Florida property owners.

Florida Statutes §83.60(2) obligates the Court to notify the tenant of the requirements of the Rent Deposit Statute. The version of the statute appearing in the Petitioner's Brief omits the key language in this respect. The statute actually provided at all material times as follows:

> In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent which accrues during the pendency of the proceeding, when due. *The court shall notify the tenant of such requirement.* Failure of the tenant to pay the rent into the registry of the court as provided herein constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default. (Emphasis added to the language omitted from the version of the statute appearing in the Appellant's Brief).

KARSTETER was notified of the requirement by a number of means. The summons served upon him contained the following "Cautionary Warning":

CAUTIONARY WARNING

> If this is an action for possession of a dwelling unit based upon non-payment of rent and if you interpose any defense to this action other than payment of rent, you must pay into the registry of the County Court the accrued rent as alleged in the attached Complaint or as may be determined by the Court and the rent which accrues during the pendency of these proceedings when due. Your failure to pay rent into the registry of the County Court as stated above constitutes an absolute waiver of your defenses other than payment and the Plaintiff will be entitled to an immediate Default.

Thereafter, GRAHAM, although not required to do so, provided KARSTETER with written Notice of Demand to Deposit Rent into the Registry of the Court. (App. F-1, 2). The Court also orally advised KARSTETER of the statutory requirement on July 9, 1986 (App. K-4), on July 22, 1986 (App. K-11) and August 4, 1986 (App. L-6).

Florida Statutes §83.60(2) provides tenants with a meaningful opportunity to be heard and does not deny them due process of law. It is simply not true that, as KARSTETER maintains in his Brief, F.S. 83.60(2) "totally deprives the tenant of any trial whatsoever". KARSTETER's Brief, page 14.

First, if the tenant simply alleges payment, no deposit need be advanced (F.S. 83.60(2)) and the tenant is entitled to a full trial before the Court or, if he elects, before a jury. F.S. §51.011. Secondly, the tenant may raise, by motion, any matter relating to the Court's jurisdiction or the sufficiency of the pleadings and be heard upon such motion without ever posting funds into the Court Registry. Thus, Florida courts have consistently held that tenants do not need to deposit funds into the Registry pursuant to F.S. §83.60(2) where the

tenants seek to determine the validity of the three-day notice, the validity of service of process or the sufficiency of the landlord's complaint. *Mihaley v. White*, 15 Fla. Supp.2d 57 (Cty. Ct., Sarasota Cty. 1986); *Wallace v. Shaw*, 20 Fla. Supp.2d 107 (Cty. Ct., Orange Cty. 1986); *Johnson v. Kalliorinen*, 16 Fla. Supp.2d 86 (Cty. Ct. Palm Beach Cty. 1986). If any such motion is filed, the time for filing an Answer is tolled and the Court hears and determines all issues presented by the motion separately and prior to Trial. *Mihaley v. White, supra.* KARSTETER filed no such motion.

Thirdly, if a tenant feels aggrieved by the amount of rent specified by the landlord as due and owing, the tenant may file a Motion to Determine the Amount of Rent to be Deposited into Court. F.S. §83.60(2) specifies, it will be recalled, that the amount to be deposited into the Court Registry is "the accrued rent as specified in the complaint *or as determined by the Court.*" F.S. §83.60(2). KARSTETER simply did not avail himself of this procedure.[8] Instead, he repeatedly refused to place any money into the Registry and demanded that a jury be empanelled to determine the threshold issue of the amount of rent, if any, to be deposited *pendente lite.* See Petitioner's Brief page 22.

Finally, after entry of Final Judgment, Florida law provides several procedures for obtaining additional hearings and for post-judgment relief. First, the tenant may file a Petition for Re-Hearing or New Trial after Final Judgment. Florida Stautes §51.011(4). If such a motion is filed, no Writ of Possession can issue until the motion has been judicially determined. Rule 1.550(a), Florida Rules of Civil Procedure. No bond or deposit of funds in the Court Registry is required for the filing of a Motion for Re-Hearing or New Trial. See Florida Statutes §51.011.

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[8]For a case illustrating the proper procedure to be employed by the tenant to obtain such determination see, *Hialeah Housing Authority v. Rodriguez*, 25 Fla.Supp.2d 4 (Cty. Ct. Dade Cty. 1987).

Secondly, and even after a Motion for Re-Hearing or New Trial has been presented and denied, the tenant can re-apply to the Trial Court pursuant to Rule 1.540, Florida Rules of Civil Procedure and obtain relief from judgment on any of the following grounds:

> (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment or decree is void; (5) the judgment or decree has been satisfied, released or discharged or a prior judgment or decree upon which it is based has been reversed or otherwise vacated or it is no longer equitable that the judgment or decree should have prospective application.

No bond or deposit of funds into the Registry of the Court is required for an application to set aside a Default Final Judgment pursuant to Rule 1.540.

KARSTETER filed no Motion for Re-Hearing or New Trial and made no application to set aside the Default Final Judgment pursuant to Rule 1.540. Instead, he stipulated with GRAHAM that he would vacate the premises by a date certain, waiving his post-judgment remedies. (App. L-54).

Contrary to KARSTETER's contentions, failure to comply with F.S. §83.60(2) does not deprive Florida tenants of access to the courts. As the Fifth District Court of Appeal of Florida has made clear:

> "[The tenant] loses only his right to retain possession of the premises if he fails to pay rent to the landlord or into the Registry of the Court. Any cause of action against the landlord to which he

> may be otherwise entitled is still available to him." *K.D. Lewis Enterprises Corporation v. Smith*, 445 So.2d 1032 (Fla. 5th DCA 1984) at 1035.

In so holding, the Court explained the rationale and practical necessity for Florida's Rent Deposit Statute:

> As now framed, the landlord may recover his rent should the tenants' suit have no legal basis. On the other hand, should the tenants' suit have merit, the rent is not lost to them. To follow the course suggested by the tenants would enable a devious tenant to live rent free during the litigation, if he could frame a legally sufficient pleading. We see no more reason to expect a landlord to continue furnishing housing without rent than to expect an oil supplier to continue furnishing oil without payment during a period of litigation. 445 So.2d 1032 at 1035.

See also, *Mahdi v. Poretsky Management, inc.*, 433 A.2d 1085 (D.C.App. 1981) and *Davis v. Rental Associates*, 456 A.2d 820 (D.C.App. 1983).

Florida Statutes §83.60(2) did not unconstitutionally deny KARSTETER access to the Courts; it merely prevented him from living "rent free during the litigation." *K.D. Lewis Enterprises Corporation v. Smith*, 445 So.2d 1032 at 1035.

Finally, the requirements of Florida Statutes §83.60(2) and the other landlord-tenant statutes have to be understood within the general context of Florida Landlord and Tenant Law and the traditional leniency which Florida courts have shown to defaulting tenants. Thus, while Florida Statutes §83.56(3) facially provides that the landlord may "terminate" the tenancy three-days after service of written notice of default and Florida Statutes §83.60(2) provides that the landlord is entitled to an "immediate" default if the tenant raises any defense other than payment and fails to pay the accrued rent or rent as determined by the court, Florida

courts have traditionally provided relief to tenants against forfeiture of leases on the condition they tender payment of the rent arrearages with interest.[9] Indeed, Florida's special "equity of redemption" can be exercised by the tenant at any stage of the proceedings and even after Final Judgment for Removal of Tenant has been entered.[10] KARSTETER never made any attempt to repay rent for the time he occupied GRAHAM's premises.

Florida Statutes §83.60(2) does not operate harshly on the tenant since it provides only for a temporary relinquishment of funds into the custody of the Court during the Summary Proceeding and no deposit is necessary where the tenant alleges prior payment. Since the Summary Proceeding cases are advanced on the Court calendar (F.S. §83.59 (2)), the tenant need only relinquish the funds for a short time. Moreover, contrary to what a literal reading of the statute might imply, the Florida caselaw has clearly established that the funds need not be deposited into the Court Registry until the actual time of trial. *Ash v. Dade County*, 18 Fla. Supp. 2d 185 (Cir. Ct., App. Div., Dade Cty. 1986). In addition, the funds are safeguarded since they are held by a neutral third party, namely, the Court. Without payment of rent and without making any deposit into the Court Registry, KARSTETER was able to take discovery, including depositions (App. O), and to prolong the final disposition of the proceedings from June 6, 1986, to August 9, 1986, during all of which time he remained in possession. All he had to do to be granted the jury trial he purportedly sought and to obtain additional delay which would thereby be occasioned was to deposit $1,460.00 of the $10,000.00

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[9]*Rader v. Prather*, 100 Fla. 591, 130 15 (Fla. 1930); *Dinn v. Edmonson*, 428 So.2d 286 (Fla. 4 DCA), pet.rev.den. 440 So.2d 351 (Fla. 1983); *Herrell v. Seyforth, Shaw, Fairwheather*, 491 So.2d 1173 (Fla. 1 DCA 1986).

[10]*Rader v. Prather, supra*. See, *Boyle, Landlord's Remedies in Florida*, (1987), Chpt. 8 "Relief From Forfeiture, The Eviction Paradox".

severance payment he had previously received from his former employer. (App. K-7). KARSTETER makes no showing that he was "indigent" as indeed he cannot.

KARSTETER also maintains that Florida's Rent Deposit Statute is unconstitutional because it deprived him of the right to jury trial. KARSTETER's loss of his right to jury trial, however, was entirely self-inflicted and resulted solely from his adamant refusal to place *any* monies into the Court Registry. The right to jury trial in Florida can be waived. See e.g., *In re: Shambow's Estate*, 15 So.2d 837 (Fla. 1943). Just as the right to jury trial may be waived by failure to make timely demand for same, a litigant may also lose the right to jury trial in a landlord and tenant case by failing to make timely deposits into the Court Registry. F.S. §83.60(2). KARSTETER, in fact, waived his right to jury trial by failing to take the required procedural steps to preserve his right to jury trial. He could have sought a determination by the Court of the amount of rent owing or he could have deposited the rent demanded into the Court Registry. F.S. §83.60(2). If he had done either, he would have preserved his right to jury trial. In fact, he did neither and as a result Default was entered against him. No one is entitled to a trial, by jury or otherwise, if there is no triable issue.

KARSTETER's contention that F.S. §83.60(2) unconstitutionally deprives tenants of their right to jury trial was carefully considered and specifically rejected by the Court in *Multach v. Snipes*, 15 Fla. Supp. 2d 52 (Cty. Ct., Palm Beach Cty. 1986). The Court's logic and reasoning should recommend themselves to this Honorable Court:

> Defendant objects to the application of Section 83.60(2) to default her, contending that the statute violates Article I, Section 22 of the Florida Constitution. The constitutional provision provides in pertinent part that the "right of trial by jury shall be secure to all and remain inviolate."

> Section 83.60(2) does not impair Defendant's *right* to a trial by jury which is available and was honored upon appropriate demand. Rather, Section 83.60(2) conditions the right upon payment of rent into the Registry of the Court during the pendency of the proceedings. Just as a Court may enter a default for failure to plead or to comply with discovery orders, so may a statute condition a tenant's presentation of defenses on the deposit of unpaid and accruing rent into the Court registry. See, *Mahdi v. Poretsky Management, Inc.*, 433 A. 2d 1085 (D.C. 1981). 15 Fla. Supp. 2d 52 at 55.

In his Brief, KARSTETER concedes that the right to trial by jury in civil cases that was created by Seventh Amendment is not applicable to the States. KARSTETER's Brief, p. 17. He maintains, however, that when "the State of Florida established . . . the right of trial by jury in civil cases, *any* deprivation of such right would be a denial of due process under amendment XIV to the *U.S. Constitution.* KARSTETER's mistake, of course, is to believe that either the "due process" clause or the "equal protection" clause compels a state to treat its citizens in identical fashion in all circumstances. Tenants in dispossessory action may constitutionally be afforded modes or mechanisms of trial which differ from those provided to other litigants. As this Court held in *Lindsey, supra*, "Classifying tenants differently will offend the equal protection safeguard 'only if the classification rests on grounds which are wholly irrelevant to the achievement of the State objective,' [citing] *McGowan v. Maryland*, 366 U.S. 420 (1961). . ." 405 U.S. 54 at 70. KARSTETER simply makes no such showing.

KARSTETER has sought to rely upon the Maryland case of *Lucky Ned Pepper's Ltd. v. Columbia Park and Recreation Association,* 494 A.2d 947 (Md. App. 1985), but this reliance is clearly misplaced. In *Lucky Ned Pepper's Ltd.,* the Court held that Maryland's Rent Deposit statute *was constitutional*

to the extent it conditioned jury trial in landlord and tenant actions upon full payment of rent in the Registry as the rent accrues. The Court stated flatly, "We do not suggest, however, that a statutory provision requiring the escrowing of rents as they become payable during the pendency of a jury trial is . . . unconstitutional." 494 A.2d 947 at 953. The Court quoted extensively from *Lindsey v. Normet, supra,* and concluded:

> . . . [A] tenant's request for a jury trial, like a request for continuance, makes it impossible to provide a lessor with quick relief. Therefore, we believe that if a tenant is to remain in possession of the landlord's property, pending resolution of a jury trial, it is not unreasonable to request that the tenant pay for the privilege of remaining on the landlord's premises. 494 A.2d 947 at 953.

While it is true that the Court in *Lucky Ned Pepper's, Ltd.*, held *unconstitutional* the particular statutory mechanism requiring the posting of past due (accrued) rents, it should be recalled that KARSTETER posted no rent at all, either the accruing rent or the accrued, into the Court Registry. Indeed, he adamantly and repeatedly refused to deposit *any* rent at all. All the Trial Court required was that KARSTETER deposit the amount accruing during the pendency of the proceedings. Having failed and refused to deposit even the accruing rent, KARSTETER is simply in no position to avail himself of the ruling in *Lucky Ned Pepper's, Ltd.* Final Judgment was not entered against him because he failed to deposit the accrued rent; Final Judgment was entered against him because he would not deposit any rent at all. Moreover, a close reading of *Lucky Ned Pepper's, Ltd.*, reveals that the Court's objection to Maryland's Rent Deposit Statute was that it "presupposes a determination that the [accrued rent] is owed." *Lucky Ned Pepper's, Ltd.*, 494 A.2d 947 at 951. In Florida's Rent Deposit Statute, on the other hand, and as indicated above, there is a built-in

procedural safeguard enabling the tenant to obtain a judicial determination of the amount to be deposited, if the tenant takes issue with the accrued rent demanded by the landlord. F.S. §83.60(2). It was this procedure which KARSTETER failed to invoke in neglecting to file a Motion to Determine Amount of Rent to be Deposited into Court Registry and it was this failure, together with his failure and refusal to deposit the accruing rent, which led to entry of Default and Default Final Judgment against him. Clearly, *Lucky Ned Pepper's, Ltd.*, provides KARSTETER with no assistance in the particular factual posture of this case.

In summation, KARSTETER failed to pay the accrued rent into the Court Registry as demanded by the Landlord and failed to invoke the procedure for obtaining a judicial determination of the amount due. He failed to pay the accruing rent and, indeed, adamantly refused to post into the Court Registry any deposit monies at all, despite the lower Court's repeated extentions of time within which to do so. In so failing and refusing, KARSTETER, at length, suffered Default Final Judgment to be entered against him pursuant to Florida Statute §83.60(2). The Trial Court, however, left intact both KARSTETER's Counterclaim and Crossclaim. Accordingly, KARSTETER lost the "right" to remain in possession of his adversary's property without payment of rent, but he did not lose his access to the court to pursue his claims for damages.

The statute which led to KARSTETER's fate is not a harsh or oppressive measure. It provides only for the temporary relinquishment of funds for short duration as a showing of good faith and as a reasonable and necessary measure to prevent undeserved economic loss on the part of Florida property owners, given the unique characteristics of the landlord-tenant relationship. Viewed in its historical perspective, the statute does not represent a curtailment of the rights enjoyed by tenants at the time of the enactment of either the Federal or Florida Constitutions but is instead

a reasonable safeguard and counter-balance to the vastly increased power of tenants to raise defenses in possessory actions brought about by the enactment of the Florida Residential Landlord and Tenant Act in 1973.

The United States Supreme Court has specifically upheld against constitutional attack a Rent Deposit Statute. *Lindsey v. Normet, supra.* The vast majority of other courts have consistently upheld legislation requiring tenants to pay rent into Court Registries during possessory actions as non-violative of either state or Federal Constitutional guarantees.[11]

Florida Statutes §83.60(2), like all validly enacted state statutes, comes to this Honorable Court clothed with a presumption of constitutionality. *Davies Warehouses Co. v. Bowles*, 321 U.S. 144 (1944). That presumption is fortified in this case by common sense, the imperative of rendering justice to property owners as well as tenants, and the specific pronouncements of this Honorable Court as well as the vast majority of lower courts who have considered and rejected the same arguments which KARSTETER now advances.

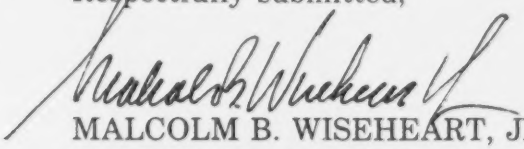
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[11] *Farrell v. Drew*, 19 N.Y.2d 486; 281 N.Y.S.2d 1, 227 N.E.2d 824 (1967); *Department of Building v. Saltzer*, 16 N.Y.2d 915, 264 N.Y.S.2d 701, 212 N.E.2d 154 (1965); *Ten West 28th Street Realty Corp. v. Moerdler*, 52 Misc. 2d 109, 275 N.Y.S.2d 144 (1966); *Milchman v. Rivera*, 9 Misc. 2d 347, 240, N.Y.S.2d 859, *app dismd* 13 N.Y.2d 1123, 247 N.Y.S.2d 122, 196 N.E.2d 555 (1963); *Schaeffer v. Montes*, 37 Misc. 2d 722, 233 N.Y.S.2d 444 (1962); *Emray Realty Corp. v. De Stefano*, 5 Misc. 2d 352, 160 N.Y.S.2d 433 (1957); *De Paul v. Kauffman*, 441 Pa. 386, 272 A.2d 500, (1971); *Davis v. Rental Associates, Inc.*, 456 A.2d 82 (1983, Dist.Col.App.); *Mahdi v. Poretsky Management, Inc.*, 433 A2d 1085 (1981, Dist.Col.App.). See, *Officenters International Corp. v. Interstate North Associates*, 166 Ga.App. 93, 303 S.E.2d 292 (Ga.App. 1983) cert.den. 464 U.S. 937 (1983); *Oaks v. District Court of State of R.I.*, 631 F.Supp. 538 (D.R.I. 1986); and *First Sav. Bank F.S.B. v. Whittley*, 751 S.W.2d 60 (Ct.Ap. W.D. 1987).

CONCLUSION

For the foregoing reasons, Respondent, GRAHAM, prays that this Honorable Court deny the Petition for Certiorari, filed by Petitioner, KARSTETER, and that the Court assess all costs, including reasonable attorneys fees, pursuant to Florida Statute §83.48 and §59.46, in favor of the Respondent and against the Petitioner.

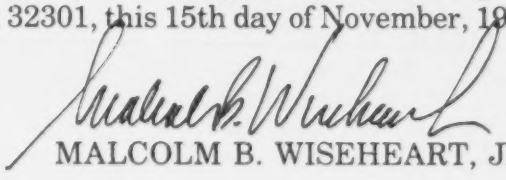
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) copies of the foregoing Brief in Opposition to Petition for Certiorari were mailed to Roland Gomez, Esq., Law Offices of Roland Gomez, Attorneys for Petitioner, 8100 Oak Lane, Suite 400, Miami Lakes, Florida 33016 and to Jerry Currington, Esquire, Assistant Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32301, this 15th day of November, 1988.



MALCOLM B. WISEHEART, JR.